

1 public safety; the prosecuting attorneys for the counties of
2 Hawaii, Kauai, and Maui; a representative of the prosecuting
3 attorney for the city and county of Honolulu; a representative
4 of the office of the public defender; representatives from the
5 Honolulu police department; a representative of the office of
6 Hawaiian affairs; a member of the judicial council;
7 representatives of the criminal defense bar; crime victim
8 advocates; and community advocates. Five subcommittees were
9 formed, and each subcommittee convened numerous times to
10 consider and prepare proposed revisions to designated parts of
11 the penal code and to related statutes outside the penal code,
12 for submission to the entire committee. The penal code review
13 committee met in plenary session seven times between June 19 and
14 December 18, 2015, and recommended the legislation proposed by
15 this Act.

16 The purpose of this Act is to amend various chapters of the
17 Hawaii penal code, and related statutes outside the penal code,
18 pursuant to the recommendations of the penal code review
19 committee.



1 PART II

2 SECTION 2. The purpose of this part is to amend chapter
3 704, Hawaii Revised Statutes, regarding penal responsibility and
4 fitness to proceed, to:

5 (1) Limit the period of conditional release of defendants
6 acquitted by reason of physical or mental disease,
7 disorder, or defect in non-felony cases to no more
8 than one year because that is the longest term of
9 incarceration that may be imposed upon a conviction in
10 those cases;

11 (2) Require that examination reports regarding a
12 defendant's fitness to proceed to trial be provided to
13 the director of health;

14 (3) Clarify that a defendant's right to bail and
15 proceedings under chapter 804, Hawaii Revised
16 Statutes, are not suspended when a court suspends
17 pretrial proceedings due to questions about the
18 defendant's physical or mental capacity;

19 (4) Provide courts with discretion to decide whether
20 records of a forensic examination shall be provided to



1 the prosecution and defense in hard copy or digital
2 format;

3 (5) Permit the defendant to be examined while in custody
4 or on release;

5 (6) Provide courts with discretion to decide whether a
6 forensic examination is necessary when a defendant
7 seeks only to modify conditions of release; and to
8 order temporary hospitalization without revocation of
9 a defendant's conditional release; and

10 (7) Add references to appropriate statutory authority for
11 involuntary hospitalization and assisted community
12 treatment criteria.

13 This part also seeks to improve the timeliness and
14 efficiency of forensic examinations. Because the department of
15 health presently lacks the personnel to participate in all
16 forensic examination panels, this part temporarily amends
17 section 704-404(2), Hawaii Revised Statutes, to repeal the
18 requirement that one member of the panels be appointed from
19 within the department. Mandatory participation in forensic
20 examinations will be restored in two years, which will give the
21 department time to address its personnel shortages.



1 SECTION 3. Chapter 704, Hawaii Revised Statutes, is
2 amended by adding two new sections to be appropriately
3 designated and to read as follows:

4 "§704- Conditional release; duration limited in
5 nonfelony cases. For any defendant granted conditional release
6 in a nonfelony case pursuant to section 704-411(1)(b), 704-412,
7 704-414, or 704-415, the period of conditional release shall not
8 exceed one year.

9 §704- Examination reports; provided to director of
10 health. Copies of all examination reports made pursuant to
11 sections 704-404, 704-406, 704-411, and 704-414 shall be
12 provided to the director of health."

13 SECTION 4. Section 704-404, Hawaii Revised Statutes, is
14 amended as follows:

15 1. By amending subsections (1) and (2) to read:

16 "(1) Whenever the defendant has filed a notice of
17 intention to rely on the defense of physical or mental disease,
18 disorder, or defect excluding responsibility, or there is reason
19 to doubt the defendant's fitness to proceed, or reason to
20 believe that the physical or mental disease, disorder, or defect
21 of the defendant will or has become an issue in the case, the



1 court may immediately suspend all further proceedings in the
2 prosecution[-]; provided that neither the right to bail nor
3 proceedings pursuant to chapter 804 shall be suspended. If a
4 trial jury has been empanelled, it shall be discharged or
5 retained at the discretion of the court. The discharge of the
6 trial jury shall not be a bar to further prosecution.

7 (2) Upon suspension of further proceedings in the
8 prosecution, the court shall appoint three qualified examiners
9 in felony cases, and one qualified examiner in nonfelony cases,
10 to examine and report upon the physical and mental condition of
11 the defendant. In felony cases, the court shall appoint at
12 least one psychiatrist and at least one licensed psychologist.
13 The third member may be a psychiatrist, licensed psychologist,
14 or qualified physician. One of the three shall be a
15 psychiatrist or licensed psychologist designated by the director
16 of health [~~from within the department of health~~]. In nonfelony
17 cases, the court may appoint either a psychiatrist or a licensed
18 psychologist. All examiners shall be appointed from a list of
19 certified examiners as determined by the department of health.
20 The court, in appropriate circumstances, may appoint an
21 additional examiner or examiners. The examination may be



1 conducted [~~on an out-patient basis~~] while the defendant is in
2 custody or on release or, in the court's discretion, when
3 necessary the court may order the defendant to be committed to a
4 hospital or other suitable facility for the purpose of the
5 examination for a period not exceeding thirty days, or [~~such~~] a
6 longer period as the court determines to be necessary for the
7 purpose. The court may direct that one or more qualified
8 physicians or psychologists retained by the defendant be
9 permitted to witness the examination. As used in this section,
10 the term "licensed psychologist" includes psychologists exempted
11 from licensure by section 465-3(a)(3)."

12 2. By amending subsection (8) to read:

13 "(8) The court shall obtain all existing medical, mental
14 health, social, police, and juvenile records, including those
15 expunged, and other pertinent records in the custody of public
16 agencies, notwithstanding any other [~~statutes,~~] statute, and
17 make [~~such~~] the records available for inspection by the
18 examiners[~~-~~] in hard copy or digital format. The court may
19 order that the records so obtained be made available to the
20 prosecuting attorney and counsel for the defendant in either
21 format, subject to conditions the court determines appropriate.



1 If, pursuant to this section, the court orders the defendant
2 committed to a hospital or other suitable facility under the
3 control of the director of health, then the county police
4 departments shall provide to the director of health and the
5 defendant copies of all police reports from cases filed against
6 the defendant [~~which~~] that have been adjudicated by the
7 acceptance of a plea of guilty or no contest, a finding of
8 guilt, acquittal, acquittal pursuant to section 704-400, or by
9 the entry of plea of guilty or no contest made pursuant to
10 chapter 853 [~~so long as~~]; provided that the disclosure to the
11 director of health and the defendant does not frustrate a
12 legitimate function of the county police departments, with the
13 exception of expunged records, records of or pertaining to any
14 adjudication or disposition rendered in the case of a juvenile,
15 or records containing data from the United States National Crime
16 Information Center. The county police departments shall
17 segregate or sanitize from the police reports information that
18 would result in the likelihood or actual identification of
19 individuals who furnished information in connection with its
20 investigation, or who were of investigatory interest. Records



1 shall not be re-disclosed except to the extent permitted by
2 law."

3 SECTION 5. Section 704-404, Hawaii Revised Statutes, is
4 amended by amending subsection (2) to read as follows:

5 "(2) Upon suspension of further proceedings in the
6 prosecution, the court shall appoint three qualified examiners
7 in felony cases, and one qualified examiner in nonfelony cases,
8 to examine and report upon the physical and mental condition of
9 the defendant. In felony cases, the court shall appoint at
10 least one psychiatrist and at least one licensed psychologist.
11 The third member may be a psychiatrist, licensed psychologist,
12 or qualified physician. One of the three shall be a
13 psychiatrist or licensed psychologist designated by the director
14 of health[-] from within the department of health. In nonfelony
15 cases, the court may appoint either a psychiatrist or a licensed
16 psychologist. All examiners shall be appointed from a list of
17 certified examiners as determined by the department of health.
18 The court, in appropriate circumstances, may appoint an
19 additional examiner or examiners. The examination may be
20 conducted while the defendant is in custody or on release or, in
21 the court's discretion, when necessary the court may order the



1 defendant to be committed to a hospital or other suitable
2 facility for the purpose of the examination for a period not
3 exceeding thirty days, or a longer period as the court
4 determines to be necessary for the purpose. The court may
5 direct that one or more qualified physicians or psychologists
6 retained by the defendant be permitted to witness the
7 examination. As used in this section, the term "licensed
8 psychologist" includes psychologists exempted from licensure by
9 section 465-3(a)(3)."

10 SECTION 6. Section 704-406, Hawaii Revised Statutes, is
11 amended to read as follows:

12 "§704-406 Effect of finding of unfitness to proceed. (1)

13 If the court determines that the defendant lacks fitness to
14 proceed, the proceeding against the defendant shall be
15 suspended, except as provided in section 704-407, and the court
16 shall commit the defendant to the custody of the director of
17 health to be placed in an appropriate institution for detention,
18 care, and treatment; provided that the commitment shall be
19 limited in certain cases as follows:

20 (a) When the defendant is charged with a petty misdemeanor
21 not involving violence or attempted violence, the



1 commitment shall be limited to no longer than sixty
2 days from the date the court determines the defendant
3 lacks fitness to proceed; and

4 (b) When the defendant is charged with a misdemeanor not
5 involving violence or attempted violence, the
6 commitment shall be limited to no longer than one
7 hundred twenty days from the date the court determines
8 the defendant lacks fitness to proceed.

9 If the court is satisfied that the defendant may be released on
10 conditions without danger to the defendant or to the person or
11 property of others, the court shall order the defendant's
12 release, which shall continue at the discretion of the court, on
13 conditions the court determines necessary; provided that the
14 release on conditions of a defendant charged with a petty
15 misdemeanor not involving violence or attempted violence shall
16 continue for no longer than sixty days, and the release on
17 conditions of a defendant charged with a misdemeanor not
18 involving violence or attempted violence shall continue for no
19 longer than one hundred twenty days. A copy of [~~the report~~] all
20 reports filed pursuant to section 704-404 shall be attached to
21 the order of commitment or order of release on conditions[-]



1 that is provided to the department of health. When the
2 defendant is committed to the custody of the director of health
3 for detention, care, and treatment, the county police
4 departments shall provide to the director of health and the
5 defendant copies of all police reports from cases filed against
6 the defendant that have been adjudicated by the acceptance of a
7 plea of guilty or nolo contendere, a finding of guilt,
8 acquittal, acquittal pursuant to section 704-400, or by the
9 entry of a plea of guilty or nolo contendere made pursuant to
10 chapter 853 [~~, so long as~~]; provided that the disclosure to the
11 director of health and the defendant does not frustrate a
12 legitimate function of the county police departments; provided
13 further that expunged records, records of or pertaining to any
14 adjudication or disposition rendered in the case of a juvenile,
15 or records containing data from the United States National Crime
16 Information Center shall not be provided. The county police
17 departments shall segregate or sanitize from the police reports
18 information that would result in the [+]likely[+] or actual
19 identification of individuals who furnished information in
20 connection with the investigation or who were of investigatory



1 interest. Records shall not be re-disclosed except to the
2 extent permitted by law.

3 (2) When the defendant is released on conditions after a
4 finding of unfitness to proceed, the department of health shall
5 establish and monitor a fitness restoration program consistent
6 with conditions set by the court order of release, and shall
7 inform the prosecuting attorney of the county that charged the
8 defendant of the program and report the defendant's compliance
9 therewith.

10 [+](3)[+] When the court, on its own motion or upon the
11 application of the director of health, the prosecuting attorney,
12 or the defendant, determines, after a hearing if a hearing is
13 requested, that the defendant has regained fitness to proceed,
14 the penal proceeding shall be resumed. If, however, the court
15 is of the view that so much time has elapsed since the
16 commitment or release on conditions of the defendant that it
17 would be unjust to resume the proceeding, the court may dismiss
18 the charge and:

19 (a) Order the defendant to be discharged;

20 (b) Subject to ~~[the law governing the involuntary civil~~
21 ~~commitment of persons affected by physical or mental~~



1 ~~disease, disorder, or defect,~~ section 334-60.2
2 regarding involuntary hospitalization criteria, order
3 the defendant to be committed to the custody of the
4 director of health to be placed in an appropriate
5 institution for detention, care, and treatment; or
6 (c) Subject to ~~[the law governing involuntary outpatient~~
7 ~~treatment,~~ section 334-121 regarding assisted
8 community treatment criteria, order the defendant to
9 be released on conditions the court determines
10 necessary.

11 [+] (4) [+] If a defendant committed to the custody of the
12 director of health for a limited period pursuant to subsection
13 (1) is not found fit to proceed prior to the expiration of the
14 commitment, the charge for which the defendant was committed for
15 a limited period shall be dismissed. Upon dismissal of the
16 charge, the defendant shall be released from custody unless the
17 defendant is subject to prosecution for other charges ~~[, in which~~
18 ~~case, unless the defendant is subject to the law governing~~
19 ~~involuntary civil commitment,~~ or subject to section 334-60.2
20 regarding involuntary hospitalization criteria, in which case
21 the court shall order the defendant's commitment to the custody



1 of the director of health to be placed in an appropriate
2 institution for detention, care, and treatment. Within a
3 reasonable time following any other commitment under subsection
4 (1), the director of health shall report to the court on whether
5 the defendant presents a substantial likelihood of becoming fit
6 to proceed in the future. The court, in addition, may appoint a
7 panel of three qualified examiners in felony cases or one
8 qualified examiner in nonfelony cases to make a report. If,
9 following [a] the report, the court determines that the
10 defendant probably will remain unfit to proceed, the court may
11 dismiss the charge and:

- 12 (a) Release the defendant; or
- 13 (b) Subject to [~~the law governing involuntary civil~~
14 ~~commitment,~~] section 334-60.2 regarding involuntary
15 hospitalization criteria, order the defendant to be
16 committed to the custody of the director of health to
17 be placed in an appropriate institution for detention,
18 care, and treatment.

19 [+](5) [+] If a defendant released on conditions for a
20 limited period pursuant to subsection (1) is not found fit to
21 proceed prior to the expiration of the release on conditions



1 order, the charge for which the defendant was released on
2 conditions for a limited period shall be dismissed. Upon
3 dismissal of the charge, the defendant shall be discharged from
4 the release on conditions unless the defendant is subject to
5 prosecution for other charges or subject to [~~the law governing~~
6 ~~involuntary civil commitment,~~] section 334-60.2 regarding
7 involuntary hospitalization criteria, in which case the court
8 shall order the defendant's commitment to the custody of the
9 director of health to be placed in an appropriate institution
10 for detention, care, and treatment. Within a reasonable time
11 following any other release on conditions under subsection (1),
12 the court shall appoint a panel of three qualified examiners in
13 felony cases or one qualified examiner in nonfelony cases to
14 report to the court on whether the defendant presents a
15 substantial likelihood of becoming fit to proceed in the future.
16 If, following the report, the court determines that the
17 defendant probably will remain unfit to proceed, the court may
18 dismiss the charge and:

- 19 (a) Release the defendant; or
20 (b) Subject to [~~the law governing involuntary civil~~
21 ~~commitment,~~] section 334-60.2 regarding involuntary



1 hospitalization criteria, order the defendant to be
2 committed to the custody of the director of health to
3 be placed in an appropriate institution for detention,
4 care, and treatment."

5 SECTION 7. Section 704-407, Hawaii Revised Statutes, is
6 amended by amending subsection (3) to read as follows:

7 "(3) After the hearing, the court shall rule on any legal
8 objection raised by the application and, in an appropriate case,
9 may quash the indictment or other charge, find it to be
10 defective or insufficient, or otherwise terminate the
11 proceedings on the law. [~~In any such case, unless~~] Unless all
12 defects in the proceedings are promptly cured, the court shall
13 terminate the commitment or release ordered under section 704-
14 406 and:

- 15 (a) Order the defendant to be discharged;
- 16 (b) Subject to [~~the law governing involuntary civil~~
17 ~~commitment of persons affected by a physical or mental~~
18 ~~disease, disorder, or defect,~~] section 334-60.2
19 regarding involuntary hospitalization criteria, order
20 the defendant to be committed to the custody of the



1 director of health to be placed in an appropriate
2 institution for detention, care, and treatment; or
3 (c) Subject to [~~the law governing involuntary outpatient~~
4 ~~treatment,~~] section 334-121 regarding assisted
5 community treatment criteria, order the defendant to
6 be released on [~~such~~] conditions as the court deems
7 necessary."

8 SECTION 8. Section 704-411, Hawaii Revised Statutes, is
9 amended to read as follows:

10 1. By amending subsection (1) to read:

11 "(1) When a defendant is acquitted on the ground of
12 physical or mental disease, disorder, or defect excluding
13 responsibility, the court, on the basis of the report made
14 pursuant to section 704-404, if uncontested, or the medical or
15 psychological evidence given at the trial or at a separate
16 hearing, shall order that:

17 (a) The defendant shall be committed to the custody of the
18 director of health to be placed in an appropriate
19 institution for custody, care, and treatment if the
20 court finds that the defendant:



1 (i) Is affected by a physical or mental disease,
2 disorder, or defect;

3 (ii) Presents a risk of danger to self or others; and

4 (iii) Is not a proper subject for conditional release;
5 provided that the director of health shall place
6 defendants charged with misdemeanors or felonies not
7 involving violence or attempted violence in the least
8 restrictive environment appropriate in light of the
9 defendant's treatment needs and the need to prevent
10 harm to the person confined and others. The county
11 police departments shall provide to the director of
12 health and the defendant copies of all police reports
13 from cases filed against the defendant that have been
14 adjudicated by the acceptance of a plea of guilty or
15 nolo contendere, a finding of guilt, acquittal,
16 acquittal pursuant to section 704-400, or by the entry
17 of a plea of guilty or nolo contendere made pursuant to
18 chapter 853 [~~so long as~~]; provided that the disclosure
19 to the director of health and the defendant does not
20 frustrate a legitimate function of the county police
21 departments; provided further that expunged records,



1 records of or pertaining to any adjudication or
2 disposition rendered in the case of a juvenile, or
3 records containing data from the United States National
4 Crime Information Center shall not be provided. The
5 county police departments shall segregate or sanitize
6 from the police reports information that would result
7 in the likelihood or actual identification of
8 individuals who furnished information in connection
9 with the investigation or who were of investigatory
10 interest. Records shall not be re-disclosed except to
11 the extent permitted by law;

12 (b) The defendant shall be granted conditional release
13 with conditions as the court deems necessary if the
14 court finds that the defendant is affected by physical
15 or mental disease, disorder, or defect and that the
16 defendant presents a danger to self or others, but
17 that the defendant can be controlled adequately and
18 given proper care, supervision, and treatment if the
19 defendant is released on condition[. ~~For any~~
20 ~~defendant granted conditional release pursuant to this~~
21 ~~paragraph, and who was charged with a petty~~



1 ~~misdemeanor, misdemeanor, or violation, the period of~~
2 ~~conditional release shall be no longer than one year];~~
3 or

4 (c) The defendant shall be discharged if the court finds
5 that the defendant is no longer affected by physical
6 or mental disease, disorder, or defect or, if so
7 affected, that the defendant no longer presents a
8 danger to self or others and is not in need of care,
9 supervision, or treatment."

10 2. By amending subsection (3) to read:

11 "(3) When ordering a hearing pursuant to subsection (2):

12 (a) In nonfelony cases, the court shall appoint a
13 qualified examiner to examine and report upon the
14 physical and mental condition of the defendant. The
15 court may appoint either a psychiatrist or a licensed
16 psychologist. The examiner may be designated by the
17 director of health from within the department of
18 health. The examiner shall be appointed from a list
19 of certified examiners as determined by the department
20 of health. The court, in appropriate circumstances,
21 may appoint an additional examiner or examiners; and



1 (b) In felony cases, the court shall appoint three
2 qualified examiners to examine and report upon the
3 physical and mental condition of the defendant. In
4 each case, the court shall appoint at least one
5 psychiatrist and at least one licensed psychologist.
6 The third member may be a psychiatrist, a licensed
7 psychologist, or a qualified physician. One of the
8 three shall be a psychiatrist or licensed psychologist
9 designated by the director of health [~~from within the~~
10 ~~department of health~~]. The three examiners shall be
11 appointed from a list of certified examiners as
12 determined by the department of health.

13 To facilitate the examination and the proceedings thereon, the
14 court may cause the defendant, if not then confined, to be
15 committed to a hospital or other suitable facility for the
16 purpose of examination for a period not exceeding thirty days or
17 [~~such~~] a longer period as the court determines to be necessary
18 for the purpose upon written findings for good cause shown. The
19 court may direct that qualified physicians or psychologists
20 retained by the defendant be permitted to witness the
21 examination. The examination and report and the compensation of



1 persons making or assisting in the examination shall be in
2 accord with section 704-404(3), (4)(a) and (b), (6), (7), (8),
3 and (9). As used in this section, the term "licensed
4 psychologist" includes psychologists exempted from licensure by
5 section 465-3(a)(3)."

6 SECTION 9. Section 704-411, Hawaii Revised Statutes, is
7 amended by amending subsection (3) to read as follows:

8 "(3) When ordering a hearing pursuant to subsection (2):

9 (a) In nonfelony cases, the court shall appoint a
10 qualified examiner to examine and report upon the
11 physical and mental condition of the defendant. The
12 court may appoint either a psychiatrist or a licensed
13 psychologist. The examiner may be designated by the
14 director of health from within the department of
15 health. The examiner shall be appointed from a list
16 of certified examiners as determined by the department
17 of health. The court, in appropriate circumstances,
18 may appoint an additional examiner or examiners; and

19 (b) In felony cases, the court shall appoint three
20 qualified examiners to examine and report upon the
21 physical and mental condition of the defendant. In



1 each case, the court shall appoint at least one
2 psychiatrist and at least one licensed psychologist.
3 The third member may be a psychiatrist, a licensed
4 psychologist, or a qualified physician. One of the
5 three shall be a psychiatrist or licensed psychologist
6 designated by the director of health[-] from within
7 the department of health. The three examiners shall
8 be appointed from a list of certified examiners as
9 determined by the department of health.

10 To facilitate the examination and the proceedings thereon, the
11 court may cause the defendant, if not then confined, to be
12 committed to a hospital or other suitable facility for the
13 purpose of examination for a period not exceeding thirty days or
14 a longer period as the court determines to be necessary for the
15 purpose upon written findings for good cause shown. The court
16 may direct that qualified physicians or psychologists retained
17 by the defendant be permitted to witness the examination. The
18 examination and report and the compensation of persons making or
19 assisting in the examination shall be in accord with section
20 704-404(3), (4)(a) and (b), (6), (7), (8), and (9). As used in



1 this section, the term "licensed psychologist" includes
2 psychologists exempted from licensure by section 465-3(a)(3)."

3 SECTION 10. Section 704-413, Hawaii Revised Statutes, is
4 amended by amending subsection (4) to read as follows:

5 "(4) If, at any time after the order pursuant to this
6 chapter granting conditional release, the court determines,
7 after hearing evidence, that:

8 (a) The person is still affected by a physical or mental
9 disease, disorder, or defect, and the conditions of
10 release have not been fulfilled; or

11 (b) For the safety of the person or others, the person's
12 conditional release should be revoked,

13 the court may forthwith modify the conditions of release or
14 order the person to be committed to the custody of the director
15 of health, subject to discharge or release in accordance with
16 the procedure prescribed in section 704-412[-]; provided that,
17 if satisfied that the person would benefit from temporary
18 hospitalization that may render a revocation of conditional
19 release unnecessary, the court, in lieu of revocation, may order
20 hospitalization for a period not to exceed ninety days, subject
21 to extension as appropriate, but in no event for a period



1 exceeding a total of one year, and may reinstate or revoke
2 conditional release at any time during the temporary
3 hospitalization."

4 SECTION 11. Section 704-414, Hawaii Revised Statutes, is
5 amended to read as follows:

6 "§704-414 Procedure upon application for discharge,
7 conditional release, or modification of conditions of release.

8 (1) Upon filing of an application pursuant to section 704-412
9 for discharge or conditional release, or upon the filing of an
10 application pursuant to section 704-413 for discharge [~~or for~~
11 ~~modification of conditions of release~~], the court shall appoint
12 three qualified examiners in felony cases, and one qualified
13 examiner in nonfelony cases, to examine and report upon the
14 physical and mental condition of the defendant. In felony
15 cases, the court shall appoint at least one psychiatrist and at
16 least one licensed psychologist. The third member may be a
17 psychiatrist, a licensed psychologist, or a qualified physician.
18 One of the three shall be a psychiatrist or licensed
19 psychologist designated by the director of health [~~from within~~
20 ~~the department of health~~]. The examiners shall be appointed
21 from a list of certified examiners as determined by the



1 department of health. To facilitate the examination and the
 2 proceedings thereon, the court may cause the defendant, if not
 3 then confined, to be committed to a hospital or other suitable
 4 facility for the purpose of the examination and may direct that
 5 qualified physicians or psychologists retained by the defendant
 6 be permitted to witness the examination. The examination and
 7 report and the compensation of persons making or assisting in
 8 the examination shall be in accord with section 704-404(3),
 9 (4)(a) and (b), (6), (7), (8), and (9). As used in this
 10 section, the term "licensed psychologist" includes psychologists
 11 exempted from licensure by section 465-3(a)(3).

12 (2) Upon the filing of an application pursuant to section
 13 704-413 for modification of conditions of release, the court may
 14 proceed as provided in subsection (1)."

15 SECTION 12. Section 704-414, Hawaii Revised Statutes, is
 16 amended by amending subsection (1) to read as follows:

17 "(1) Upon filing of an application pursuant to section
 18 704-412 for discharge or conditional release, or upon the filing
 19 of an application pursuant to section 704-413 for discharge, the
 20 court shall appoint three qualified examiners in felony cases,
 21 and one qualified examiner in nonfelony cases, to examine and



1 report upon the physical and mental condition of the defendant.
2 In felony cases, the court shall appoint at least one
3 psychiatrist and at least one licensed psychologist. The third
4 member may be a psychiatrist, a licensed psychologist, or a
5 qualified physician. One of the three shall be a psychiatrist
6 or licensed psychologist designated by the director of health[-]
7 from within the department of health. The examiners shall be
8 appointed from a list of certified examiners as determined by
9 the department of health. To facilitate the examination and the
10 proceedings thereon, the court may cause the defendant, if not
11 then confined, to be committed to a hospital or other suitable
12 facility for the purpose of the examination and may direct that
13 qualified physicians or psychologists retained by the defendant
14 be permitted to witness the examination. The examination and
15 report and the compensation of persons making or assisting in
16 the examination shall be in accord with section 704-404(3),
17 (4)(a) and (b), (6), (7), (8), and (9). As used in this
18 section, the term "licensed psychologist" includes psychologists
19 exempted from licensure by section 465-3(a)(3)."



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PART III

SECTION 13. The purpose of this part is to amend chapter 706, Hawaii Revised Statutes, regarding disposition of convicted defendants, to:

- (1) Establish an enumerated priority schedule for payments that defendants are ordered to make following conviction;
- (2) Require defendants to pay restitution pursuant to chapter 353, Hawaii Revised Statutes, while in custody, notwithstanding any contrary law or court order;
- (3) Ensure that efforts are made to inform victims and their families of the right to be present at sentencing and to be heard, regardless of whether a pre-sentence diagnosis of the defendant is made or waived;
- (4) Repeal a provision that precludes a defendant convicted of a crime involving serious or substantial bodily injury within the previous five years from being eligible for intermediate sanctions such as drug



1 court, veterans treatment court, and mental health
2 court;

3 (5) Repeal provisions related to a program of regimental
4 discipline that has not been implemented;

5 (6) Repeal a provision imposing a mandatory minimum prison
6 term on repeat offenders convicted of small drug
7 possession offenses who may be better managed with
8 probation and drug treatment;

9 (7) Authorize probation officers to request expungements
10 on behalf of defendants; and

11 (8) Provide courts with discretion to add certain
12 conditions to probation, including a requirement that
13 a defendant undergo mental health and substance abuse
14 assessment, submit to a search by a probation officer,
15 sign a waiver of extradition, and pay extradition
16 costs.

17 SECTION 14. Chapter 706, Hawaii Revised Statutes, is
18 amended by adding a new section to be appropriately designated
19 and to read as follows:

20 "§706- Payments by defendant; order of priority. When
21 a defendant is ordered to make payments pursuant to chapters



1 351, 706, 846F, 853, or as otherwise provided by law, payments
2 shall be made in the following order of priority:

3 (1) Restitution;

4 (2) Crime victims compensation fee;

5 (3) Probation services fee;

6 (4) Human trafficking victim services fee;

7 (5) Other fees, including but not limited to internet
8 crimes against children fee and drug demand reduction
9 assessment fee;

10 (6) DNA analysis monetary assessment; and

11 (7) Fines."

12 SECTION 15. Section 706-601, Hawaii Revised Statutes, is
13 amended by amending subsection (3) to read as follows:

14 "(3) With the consent of the court, the requirement of a
15 pre-sentence diagnosis may be waived by agreement of both the
16 defendant and the prosecuting attorney[-]; provided that in
17 felony cases, the prosecuting attorney shall inform, or make
18 reasonable efforts to inform, the victim or the victim's
19 surviving immediate family members of their rights to be present
20 at the sentencing hearing and to provide information relating to
21 the impact of the crime, including any requested restitution."



1 SECTION 16. Section 706-603, Hawaii Revised Statutes, is
2 amended by amending subsection (4) to read as follows:

3 "(4) Restitution [~~to the victim of a sexual or violent~~
4 ~~crime~~] shall be made before payment of the monetary
5 assessment[-] pursuant to section 706- ."

6 SECTION 17. Section 706-604, Hawaii Revised Statutes, is
7 amended by amending subsection (3) to read as follows:

8 "(3) In all circuit court cases, regardless of whether a
9 pre-sentence report has been prepared or waived, the court shall
10 afford a fair opportunity to the victim to be heard on the issue
11 of the defendant's disposition, before imposing sentence. The
12 court, service center, or agency personnel who prepare the pre-
13 sentence diagnosis and report shall inform the victim of the
14 sentencing date and of the victim's opportunity to be heard. In
15 the case of a homicide or where the victim is a minor or is
16 otherwise unable to appear at the sentencing hearing, the
17 victim's family shall be afforded the fair opportunity to be
18 heard."

19 SECTION 18. Section 706-605, Hawaii Revised Statutes, is
20 amended by amending subsection (6) to read as follows:



1 "(6) The court shall impose a compensation fee upon every
2 person convicted of a criminal offense pursuant to section
3 351-62.6; provided that the court shall waive the imposition of
4 a compensation fee if it finds that the defendant is unable to
5 pay the compensation fee. When a defendant is ordered to make
6 payments in addition to the compensation fee, payments by the
7 defendant shall be made in the [~~following~~] order of priority[+]

8 ~~(a) Restitution;~~

9 ~~(b) Crime victim compensation fee;~~

10 ~~(c) Probation services fee;~~

11 ~~(d) Other fees; and~~

12 ~~(e) Fines.] established in section 706- ."~~

13 SECTION 19. Section 706-605.1, Hawaii Revised Statutes, is
14 amended to read as follows:

15 "**§706-605.1 Intermediate sanctions; eligibility; criteria**
16 **and conditions.** (1) The judiciary shall implement alternative
17 programs that place, control, supervise, and treat selected
18 defendants in lieu of a sentence of incarceration.

19 (2) Defendants may be considered for sentencing to
20 alternative programs if they[+]



1 ~~(a) Have]~~ have not been convicted of a non-probationable
2 class A felony[, ~~and~~

3 ~~(b) Have not, within the previous five years, been~~
4 ~~convicted of a crime involving serious bodily injury~~
5 ~~or substantial bodily injury as defined by chapter~~
6 ~~707].~~

7 (3) A defendant may be sentenced by a district, family, or
8 circuit court judge to alternative programs.

9 (4) As used in this section, "alternative programs" means
10 programs that [~~from time to time,~~] are created and funded by
11 legislative appropriation or federal grant naming the judiciary
12 or one of its operating agencies as the expending agency and
13 that are intended to provide an alternative to incarceration.
14 Alternative programs may include:

15 (a) House arrest, or curfew using electronic monitoring
16 and surveillance, or both;

17 (b) Drug court programs for defendants with assessed
18 alcohol or drug abuse problems, or both;

19 (c) Therapeutic residential and nonresidential programs,
20 including secure drug treatment facilities;



- 1 (c) Section 134-17 only as it relates to providing false
2 information or evidence to obtain a permit under
3 section 134-9; [~~section~~]
- 4 (d) Section 188-23 relating to possession or use of
5 explosives, electrofishing devices, and poisonous
6 substances in state waters; [~~section~~]
- 7 (e) Section 386-98(d) (1) relating to fraud violations and
8 penalties; [~~section~~]
- 9 (f) Section 431:2-403(b) (2) relating to insurance fraud;
10 [~~section~~]
- 11 (g) Section 707-703 relating to negligent homicide in the
12 second degree; [~~section~~]
- 13 (h) Section 707-711 relating to assault in the second
14 degree; [~~section~~]
- 15 (i) Section 707-713 relating to reckless endangering in
16 the first degree; [~~section~~]
- 17 (j) Section 707-716 relating to terroristic threatening in
18 the first degree; [~~section~~]
- 19 (k) Section 707-721 relating to unlawful imprisonment in
20 the first degree; [~~section~~]



1 or who is convicted of attempting to commit murder in the second
2 degree, any class A felony, any class B felony, or any of the
3 class C felony offenses enumerated above and who has a prior
4 conviction or prior convictions for the following felonies,
5 including an attempt to commit the same: murder, murder in the
6 first or second degree, a class A felony, a class B felony, any
7 of the class C felony offenses enumerated above, or any felony
8 conviction of another jurisdiction, shall be sentenced to a
9 mandatory minimum period of imprisonment without possibility of
10 parole [~~during such period as follows:~~] as provided in
11 subsection (2).

12 (2) A mandatory minimum period of imprisonment without
13 possibility of parole during that period shall be imposed
14 pursuant to subsection (1), as follows:

- 15 (a) One prior felony conviction:
- 16 (i) Where the instant conviction is for murder in the
17 second degree or attempted murder in the second
18 degree--ten years;
- 19 (ii) Where the instant conviction is for a class A
20 felony--six years, eight months;



- 1 (iii) Where the instant conviction is for a class B
2 felony--three years, four months; and
- 3 (iv) Where the instant conviction is for a class C
4 felony offense enumerated above--one year, eight
5 months;
- 6 (b) Two prior felony convictions:
- 7 (i) Where the instant conviction is for murder in the
8 second degree or attempted murder in the second
9 degree--twenty years;
- 10 (ii) Where the instant conviction is for a class A
11 felony--thirteen years, four months;
- 12 (iii) Where the instant conviction is for a class B
13 felony--six years, eight months; and
- 14 (iv) Where the instant conviction is for a class C
15 felony offense enumerated above--three years,
16 four months; and
- 17 (c) Three or more prior felony convictions:
- 18 (i) Where the instant conviction is for murder in the
19 second degree or attempted murder in the second
20 degree--thirty years;



1 (ii) Where the instant conviction is for a class A
2 felony--twenty years;

3 (iii) Where the instant conviction is for a class B
4 felony--ten years; and

5 (iv) Where the instant conviction is for a class C
6 felony offense enumerated above--five years.

7 [~~2~~] (3) Except as provided in subsection [~~3~~]7 (4), a
8 person shall not be sentenced to a mandatory minimum period of
9 imprisonment under this section unless the instant felony
10 offense was committed during [~~such~~] the period as follows:

11 (a) Within twenty years after a prior felony conviction
12 where the prior felony conviction was for murder in
13 the first degree or attempted murder in the first
14 degree;

15 (b) Within twenty years after a prior felony conviction
16 where the prior felony conviction was for murder in
17 the second degree or attempted murder in the second
18 degree;

19 (c) Within twenty years after a prior felony conviction
20 where the prior felony conviction was for a class A
21 felony;



1 (d) Within ten years after a prior felony conviction where
2 the prior felony conviction was for a class B felony;

3 (e) Within five years after a prior felony conviction
4 where the prior felony conviction was for a class C
5 felony offense enumerated above;

6 (f) Within the maximum term of imprisonment possible after
7 a prior felony conviction of another jurisdiction.

8 [~~3~~] (4) If a person was sentenced for a prior felony
9 conviction to a special term under section 706-667, then the
10 person shall not be sentenced to a mandatory minimum period of
11 imprisonment under this section unless the instant felony
12 offense was committed during [~~such~~] that period as follows:

13 (a) Within eight years after a prior felony conviction
14 where the prior felony conviction was for a class A
15 felony;

16 (b) Within five years after the prior felony conviction
17 where the prior felony conviction was for a class B
18 felony;

19 (c) Within four years after the prior felony conviction
20 where the prior felony conviction was for a class C
21 felony offense enumerated above.



1 [~~4~~] (5) Notwithstanding any other law to the contrary,
2 any person convicted of any of the following misdemeanor
3 offenses:

4 (a) Section 707-712 relating to assault in the third
5 degree;

6 (b) Section 707-717 relating to terroristic threatening in
7 the second degree;

8 (c) Section 707-733 relating to sexual assault in the
9 fourth degree;

10 (d) Section 708-822 relating to criminal property damage
11 in the third degree;

12 (e) Section 708-832 relating to theft in the third degree;
13 and

14 (f) Section 708-833.5(2) relating to misdemeanor
15 shoplifting,

16 and who has been convicted of any of the offenses enumerated
17 above on at least three prior and separate occasions within
18 three years of the date of the commission of the present
19 offense, shall be sentenced to no less than nine months of
20 imprisonment. Whenever a court sentences a defendant under this
21 subsection for an offense under section 707-733, the court shall



1 order the defendant to participate in a sex offender assessment
2 and, if recommended based on the assessment, participate in the
3 sex offender treatment program established by chapter 353E.

4 [~~5~~] (6) The sentencing court may impose the above
5 sentences consecutive to any sentence imposed on the defendant
6 for a prior conviction, but [~~such~~] the sentence shall be imposed
7 concurrent to the sentence imposed for the instant conviction.
8 The court may impose a lesser mandatory minimum period of
9 imprisonment without possibility of parole than that mandated by
10 this section where the court finds that strong mitigating
11 circumstances warrant [~~such~~] the action. Strong mitigating
12 circumstances shall include, but shall not be limited to the
13 provisions of section 706-621. The court shall provide a
14 written opinion stating its reasons for imposing the lesser
15 sentence.

16 [~~6~~] (7) A person who is imprisoned in a correctional
17 institution pursuant to subsection (1) shall not be paroled
18 prior to the expiration of the mandatory minimum term of
19 imprisonment imposed pursuant to subsection (1).

20 [~~7~~] (8) For purposes of this section:



1 (a) Convictions under two or more counts of an indictment
2 or complaint shall be considered a single conviction
3 without regard to when the convictions occur;

4 (b) A prior conviction in this or another jurisdiction
5 shall be deemed a felony conviction if it was
6 punishable by a sentence of death or of imprisonment
7 in excess of one year; and

8 (c) A conviction occurs on the date judgment is entered."

9 SECTION 21. Section 706-622.5, Hawaii Revised Statutes, is
10 amended as follows:

11 1. By amending subsection (1) to read:

12 "(1) Notwithstanding section 706-620(3), a person
13 convicted for the first or second time for any offense under
14 section 329-43.5 involving the possession or use of drug
15 paraphernalia or any felony offense under part IV of chapter 712
16 involving the possession or use of any dangerous drug,
17 detrimental drug, harmful drug, intoxicating compound,
18 marijuana, or marijuana concentrate, as defined in section
19 712-1240, but not including any offense under part IV of chapter
20 712 involving the distribution or manufacture of any such drugs
21 or substances and not including any methamphetamine



1 [trafficking] offenses under sections 712-1240.7 [and],
2 712-1240.8[7] as that section was in effect prior to the
3 effective date of this Act, 712-1241, and 712-1242, is eligible
4 to be sentenced to probation under subsection (2) if the person
5 meets the following criteria:

- 6 (a) The court has determined that the person is nonviolent
7 after reviewing the person's criminal history, the
8 factual circumstances of the offense for which the
9 person is being sentenced, and any other relevant
10 information;
- 11 (b) The person has been assessed by a certified substance
12 abuse counselor to be in need of substance abuse
13 treatment due to dependency or abuse under the
14 applicable Diagnostic and Statistical Manual and
15 Addiction Severity Index; and
- 16 (c) Except for those persons directed to substance abuse
17 treatment under the supervision of the drug court, the
18 person presents a proposal to receive substance abuse
19 treatment in accordance with the treatment plan
20 prepared by a certified substance abuse counselor
21 through a substance abuse treatment program that



1 includes an identified source of payment for the
2 treatment program."

3 2. By amending subsection (4) to read:

4 "(4) [~~The court, upon~~] Upon written application from a
5 person sentenced under this part[7] or a probation officer, the
6 court shall issue a court order to expunge the record of
7 conviction for that particular offense; provided that a person
8 has successfully completed the substance abuse treatment program
9 and complied with other terms and conditions of probation. A
10 person sentenced to probation under this section who has not
11 previously been sentenced under this section shall be eligible
12 for one time only for expungement under this subsection."

13 SECTION 22. Section 706-622.9, Hawaii Revised Statutes, is
14 amended by amending subsection (3) to read as follows:

15 "(3) [~~The court, upon~~] Upon written application from a
16 person sentenced under this part[7] or a probation officer, the
17 court shall issue a court order to expunge the record of
18 conviction for that particular offense; provided that a person
19 has successfully completed the substance abuse treatment program
20 and complied with other terms and conditions of probation. A
21 person sentenced to probation under this section shall be



1 eligible for expungement under this subsection only if the
2 person has not been previously convicted of a felony offense in
3 this or another jurisdiction."

4 SECTION 23. Section 706-624, Hawaii Revised Statutes, is
5 amended by amending subsection (2) to read as follows:

6 "(2) Discretionary conditions. The court may provide, as
7 further conditions of a sentence of probation, to the extent
8 that the conditions are reasonably related to the factors set
9 forth in section 706-606 and to the extent that the conditions
10 involve only deprivations of liberty or property as are
11 reasonably necessary for the purposes indicated in section 706-
12 606(2), that the defendant:

13 (a) Serve a term of imprisonment to be determined by the
14 court at sentencing in class A felony cases under
15 section 707-702, not exceeding two years in class A
16 felony cases under part IV of chapter 712, not
17 exceeding eighteen months in class B felony cases, not
18 exceeding one year in class C felony cases, not
19 exceeding six months in misdemeanor cases, and not
20 exceeding five days in petty misdemeanor cases;
21 provided that notwithstanding any other provision of



1 law, any order of imprisonment under this subsection
2 that provides for prison work release shall require
3 the defendant to pay thirty per cent of the
4 defendant's gross pay earned during the prison work
5 release period to satisfy any restitution order. The
6 payment shall be handled by the adult probation
7 division and shall be paid to the victim on a monthly
8 basis;

9 (b) Perform a specified number of hours of services to the
10 community as described in section 706-605(1)(d);

11 (c) Support the defendant's dependents and meet other
12 family responsibilities;

13 (d) Pay a fine imposed pursuant to section 706-605(1)(b);

14 (e) Work conscientiously at suitable employment or pursue
15 conscientiously a course of study or vocational
16 training that will equip the defendant for suitable
17 employment;

18 (f) Refrain from engaging in a specified occupation,
19 business, or profession bearing a reasonably direct
20 relationship to the conduct constituting the crime or
21 engage in the specified occupation, business, or



- 1 profession only to a stated degree or under stated
2 circumstances;
- 3 (g) Refrain from frequenting specified kinds of places or
4 from associating unnecessarily with specified persons,
5 including the victim of the crime, any witnesses,
6 regardless of whether they actually testified in the
7 prosecution, law enforcement officers, co-defendants,
8 or other individuals with whom contact may adversely
9 affect the rehabilitation or reformation of the person
10 convicted;
- 11 (h) Refrain from use of alcohol or any use of narcotic
12 drugs or controlled substances without a prescription;
- 13 (i) Refrain from possessing a firearm, ammunition,
14 destructive device, or other dangerous weapon;
- 15 (j) Undergo available medical or mental health assessment
16 and treatment, including assessment and treatment for
17 substance abuse dependency, and remain in a specified
18 facility if required for that purpose;
- 19 (k) Reside in a specified place or area or refrain from
20 residing in a specified place or area;



- 1 (1) Submit to periodic urinalysis or other similar testing
2 procedure;
- 3 (m) Refrain from entering specified geographical areas
4 without the court's permission;
- 5 (n) Refrain from leaving the person's dwelling place
6 except to go to and from the person's place of
7 employment, the office of the person's physician or
8 dentist, the probation office, or any other location
9 as may be approved by the person's probation officer
10 pursuant to court order. As used in this paragraph,
11 "dwelling place" includes the person's yard or, in the
12 case of condominiums, the common elements;
- 13 (o) Comply with a specified curfew;
- 14 (p) Submit to monitoring by an electronic monitoring
15 device; [eæ]
- 16 (q) Submit to a search by any probation officer, with or
17 without a warrant, of the defendant's person,
18 residence, vehicle, or other sites or property under
19 the defendant's control, based upon the probation
20 officer's reasonable suspicion that illicit substances



- 1 or contraband may be found on the person or in the
2 place to be searched;
- 3 (r) Sign a waiver of extradition and pay extradition costs
4 as determined and ordered by the court;
- 5 (s) Comply with a service plan developed using current
6 assessment tools; and
- 7 ~~(q)~~ (t) Satisfy other reasonable conditions as the court
8 may impose."

9 SECTION 24. Section 706-642, Hawaii Revised Statutes, is
10 amended by amending subsection (3) to read as follows:

11 "(3) When a defendant sentenced to pay a fine is also
12 ordered to make restitution or reparation to the victim or
13 victims, or to the person or party who has incurred loss or
14 damage because of the defendant's crime, the payment of
15 restitution or reparation shall have priority over the payment
16 of the fine~~[-]~~, pursuant to section 706- . No fine shall be
17 collected until the restitution or reparation order has been
18 satisfied."

19 SECTION 25. Section 706-646, Hawaii Revised Statutes, is
20 amended by amending subsections (2) and (3) to read as follows:



1 "(2) The court shall order the defendant to make
2 restitution for reasonable and verified losses suffered by the
3 victim or victims as a result of the defendant's offense when
4 requested by the victim. The court shall order restitution to
5 be paid to the crime victim compensation commission [~~in the~~
6 event] if that the victim has been given an award for
7 compensation under chapter 351. If the court orders payment of
8 a fine in addition to restitution or a compensation fee, or
9 both, the payment of restitution and compensation fee shall
10 [~~have priority over the payment of the fine, and payment of~~
11 ~~restitution shall have priority over payment of a compensation~~
12 ~~fee.~~] be made pursuant to section 706- .

13 (3) In ordering restitution, the court shall not consider
14 the defendant's financial ability to make restitution in
15 determining the amount of restitution to order. The court,
16 however, shall consider the defendant's financial ability to
17 make restitution for the purpose of establishing the time and
18 manner of payment. The court shall specify the time and manner
19 in which restitution is to be paid. While the defendant is in
20 the custody of the department of public safety, restitution
21 shall be collected pursuant to chapter 353 and any court-ordered



1 payment schedule shall be suspended. Restitution shall be a
2 dollar amount that is sufficient to reimburse any victim fully
3 for losses, including but not limited to:

4 (a) Full value of stolen or damaged property, as
5 determined by replacement costs of like property, or
6 the actual or estimated cost of repair, if repair is
7 possible;

8 (b) Medical expenses; and

9 (c) Funeral and burial expenses incurred as a result of
10 the crime."

11 SECTION 26. Section 706-648, Hawaii Revised Statutes, is
12 amended by amending subsection (2) to read as follows:

13 "(2) The entire fee ordered or assessed shall be payable
14 forthwith by cash, check, or by a credit card approved by the
15 court. When a defendant is also ordered to pay a fine, make
16 restitution, pay a crime victim compensation fee, or pay other
17 fees in addition to the probation services fee under subsection
18 (1), payments by the defendant shall be made [~~in the following~~
19 ~~order of priority:~~

20 ~~(a) Restitution;~~

21 ~~(b) Crime victim compensation fee;~~



- 1 ~~(c) Probation services fee;~~
2 ~~(d) Other fees; and~~
3 ~~(e) Fines.] pursuant to section 706- ____."~~

4 SECTION 27. Section 706-650, Hawaii Revised Statutes, is
5 amended to read as follows:

6 "~~[+]§706-650[+]~~ Drug demand reduction assessments; special
7 fund. (1) In addition to any disposition authorized by chapter
8 706 or 853, any person who is:

- 9 (a) Convicted of an offense under part IV of chapter 712,
10 except sections 712-1250.5 and 712-1257;
11 (b) Convicted under section 707-702.5;
12 (c) Convicted of a felony or misdemeanor offense under
13 part IV of chapter 329;
14 (d) Convicted under section 291-3.1, 291-3.2, 291-3.3,
15 291E-61, or 291E-61.5;
16 (e) Found in violation of part III of chapter 291E; or
17 (f) Charged with any offense under paragraphs (a) to (d)
18 who has been granted a deferred acceptance of guilty
19 or no contest plea;

20 shall be ordered to pay a monetary assessment under subsection
21 (2), except as provided under subsection ~~[(6)-]~~ (5).



1 (2) Monetary assessments for individuals subject to
2 subsection (1) shall not exceed the following:

3 (a) \$3,000 when the offense is a class A felony;

4 (b) \$2,000 when the offense is a class B felony;

5 (c) \$1,000 when the offense is a class C felony;

6 (d) \$500 when the offense is a misdemeanor; or

7 (e) \$250 when the person has been found guilty of an
8 offense under section 712-1249, 291-3.1, 291-3.2, 291-
9 3.3, 291E-61, or has been found in violation of part
10 III of chapter 291E.

11 Notwithstanding sections 706-640 and 706-641 and any other law
12 to the contrary, the assessments provided by this section shall
13 be in addition to and not in lieu of, and shall not be used to
14 offset or reduce, any fine authorized or required by law[+] and
15 shall be paid pursuant to section 706-_____.

16 (3) There is established a special fund to be known as the
17 "drug demand reduction assessments special fund" to be
18 administered by the department of health. The disbursement of
19 money from the drug demand reduction assessments special fund
20 shall be used to supplement substance abuse treatment and other
21 substance abuse demand reduction programs.



1 (4) All monetary assessments paid and interest accrued on
2 funds collected pursuant to this section shall be deposited into
3 the drug demand reduction assessments special fund.

4 ~~[(5) Restitution to the victim of a crime enumerated in~~
5 ~~subsection (1) shall be made, and probation fees and crime~~
6 ~~victim compensation fees imposed under part III of chapter 706~~
7 ~~shall be paid, before payment of the monetary assessment.~~

8 ~~(6)]~~ (5) If the court determines that the person has the
9 ability to pay the monetary assessment and is eligible for
10 probation or will not be sentenced to incarceration, unless
11 otherwise required by law, the court may order the person to
12 undergo a substance abuse treatment program at the person's
13 expense. If the person undergoes a substance abuse treatment
14 program at the person's expense, the court may waive or reduce
15 the amount of the monetary assessment. Upon a showing by the
16 person that the person lacks the financial ability to pay all or
17 part of the monetary assessment, the court may waive or reduce
18 the amount of the monetary assessment."

19 SECTION 28. Section 706-650.5, Hawaii Revised Statutes, is
20 amended by amending subsection (5) to read as follows:



1 "(5) When a defendant is ordered to make payments in
2 addition to the human trafficking victim services fee authorized
3 under subsection (2), payments by the defendant shall be made
4 ~~[in the following order of priority:~~

5 ~~(a) Restitution imposed under section 706-646, 707-785, or~~
6 ~~707-786;~~

7 ~~(b) Crime victim compensation fee imposed under section~~
8 ~~351-62.6;~~

9 ~~(c) Probation services fee imposed under section 706-648;~~

10 ~~(d) Human trafficking victim services fee imposed under~~
11 ~~subsection (2);~~

12 ~~(e) Other fees; and~~

13 ~~(f) Fines.] pursuant to section 706- ____."~~

14 SECTION 29. Section 706-660, Hawaii Revised Statutes, is
15 amended by amending subsection (2) to read as follows:

16 "(2) A person who has been convicted of a class B or class
17 C felony for any offense under part IV of chapter 712 may be
18 sentenced to an indeterminate term of imprisonment; provided
19 that this subsection shall not apply to sentences imposed under
20 sections 706-606.5, 706-660.1, 712-1240.5, 712-1240.8 ~~[7]~~ as that
21 section was in effect prior to the effective date of this Act,



1 712-1242, 712-1245, 712-1249.5, 712-1249.6, 712-1249.7, and 712-
2 1257.

3 When ordering a sentence under this subsection, the court
4 shall impose a term of imprisonment, which shall be as follows:

5 (a) For a class B felony--ten years or less, but not less
6 than five years; and

7 (b) For a class C felony--five years or less, but not less
8 than one year.

9 The minimum length of imprisonment shall be determined by the
10 Hawaii paroling authority in accordance with section 706-669."

11 SECTION 30. Section 706-605.5, Hawaii Revised Statutes, is
12 repealed.

13 ~~["§706-605.5]—Program of regimental discipline.—(1) The~~
14 ~~department of public safety is authorized to implement a~~
15 ~~rigorous offender program based on regimental discipline.~~
16 ~~Participants shall undergo a regimen of hard work, physical~~
17 ~~training, intensive counseling, and educational and treatment~~
18 ~~programs within a highly structured and motivational~~
19 ~~environment. The program shall be available to defendants and~~
20 ~~committed persons who:~~

21 (a) ~~Have not been convicted of a class A felony;~~



1 ~~(b) Are not considered violent;~~
2 ~~(c) Are chosen by the director of public safety;~~
3 ~~(d) Are in good physical condition;~~
4 ~~(e) Have not been previously sentenced to an indeterminate~~
5 ~~term of imprisonment; and~~
6 ~~(f) Are willing to participate in the program.~~

7 ~~(2) The court, with the approval of the director of public~~
8 ~~safety, may order a defendant to satisfactorily complete a~~
9 ~~program of regimental discipline of not less than ninety days~~
10 ~~before the court sentences a defendant or as a condition of~~
11 ~~probation or a deferred acceptance of guilty plea.~~

12 ~~(3) If a defendant is ordered to complete a program, the~~
13 ~~director of public safety shall certify to the court whether the~~
14 ~~defendant completed the program satisfactorily. If the~~
15 ~~defendant fails to complete the program satisfactorily as a~~
16 ~~condition of a deferred acceptance of guilty plea, such a~~
17 ~~failure shall be considered in accordance with section 853-3.~~
18 ~~If a defendant fails to complete the program satisfactorily as a~~
19 ~~condition of probation, such a failure shall be considered in~~
20 ~~accordance with section 706-625."]~~



1 PART IV

2 SECTION 31. The purpose of this part is to amend chapter
3 707, Hawaii Revised Statutes, regarding offenses against the
4 person, to:

5 (1) Amend the definition of "sexual contact" to repeal
6 language that:

7 (A) Exempts married couples from certain sexual
8 assault offenses; and

9 (B) Has the effect of requiring the prosecution to
10 allege and prove that a victim who was a minor
11 under the age of fourteen was not married to the
12 offender, even though a minor of that age cannot
13 legally marry in any event;

14 (2) Amend the definition of sexual assault in the fourth
15 degree to maintain an exception for married couples
16 because of the relatively low threshold for
17 culpability in that offense; and

18 (3) Align the organization of the mental state
19 requirements for assault in the second degree with
20 that of assault in the third degree.



1 SECTION 32. Section 707-700, Hawaii Revised Statutes, is
2 amended by amending the definition of "sexual contact" to read
3 as follows:

4 "Sexual contact" means any touching, other than acts of
5 "sexual penetration", of the sexual or other intimate parts of
6 ~~[a person not married to the actor,]~~ another, or of the sexual
7 or other intimate parts of the actor by ~~[the person,]~~ another,
8 whether directly or through the clothing or other material
9 intended to cover the sexual or other intimate parts."

10 SECTION 33. Section 707-711, Hawaii Revised Statutes, is
11 amended by amending subsection (1) to read as follows:

12 "(1) A person commits the offense of assault in the second
13 degree if:

14 (a) The person intentionally ~~[or]~~, knowingly, or
15 recklessly causes substantial bodily injury to
16 another;

17 (b) The person recklessly causes serious ~~[or substantial]~~
18 bodily injury to another;

19 (c) The person intentionally or knowingly causes bodily
20 injury to a correctional worker, as defined in section



1 710-1031(2), who is engaged in the performance of duty
2 or who is within a correctional facility;

3 (d) The person intentionally or knowingly causes bodily
4 injury to another with a dangerous instrument;

5 (e) The person intentionally or knowingly causes bodily
6 injury to an educational worker who is engaged in the
7 performance of duty or who is within an educational
8 facility. For the purposes of this paragraph,
9 "educational worker" means any administrator,
10 specialist, counselor, teacher, or employee of the
11 department of education or an employee of a charter
12 school; a person who is a volunteer, as defined in
13 section 90-1, in a school program, activity, or
14 function that is established, sanctioned, or approved
15 by the department of education; or a person hired by
16 the department of education on a contractual basis and
17 engaged in carrying out an educational function;

18 (f) The person intentionally or knowingly causes bodily
19 injury to any emergency medical services provider who
20 is engaged in the performance of duty. For the
21 purposes of this paragraph, "emergency medical



1 services provider" means emergency medical services
2 personnel, as defined in section 321-222, and
3 physicians, physician's assistants, nurses, nurse
4 practitioners, certified registered nurse
5 anesthetists, respiratory therapists, laboratory
6 technicians, radiology technicians, and social
7 workers, providing services in the emergency room of a
8 hospital;

9 (g) The person intentionally or knowingly causes bodily
10 injury to a person employed at a state-operated or
11 -contracted mental health facility. For the purposes
12 of this paragraph, "a person employed at a state-
13 operated or -contracted mental health facility"
14 includes health care professionals as defined in
15 section 451D-2, administrators, orderlies, security
16 personnel, volunteers, and any other person who is
17 engaged in the performance of a duty at a state-
18 operated or -contracted mental health facility;

19 (h) The person intentionally or knowingly causes bodily
20 injury to a person who:



1 (i) The defendant has been restrained from, by order
2 of any court, including an ex parte order,
3 contacting, threatening, or physically abusing
4 pursuant to chapter 586; or

5 (ii) Is being protected by a police officer ordering
6 the defendant to leave the premises of that
7 protected person pursuant to section 709-906(4),
8 during the effective period of that order; or

9 [H] (i) [H] The person intentionally or knowingly causes bodily
10 injury to any firefighter or water safety officer who
11 is engaged in the performance of duty. For the
12 purposes of this paragraph, "firefighter" has the same
13 meaning as in section 710-1012 and "water safety
14 officer" means any public servant employed by the
15 United States, the State, or any county as a lifeguard
16 or person authorized to conduct water rescue or ocean
17 safety functions."

18 SECTION 34. Section 707-733, Hawaii Revised Statutes, is
19 amended by amending subsection (1) to read as follows:

20 "(1) A person commits the offense of sexual assault in the
21 fourth degree if:



- 1 (a) The person knowingly subjects another person, not
2 married to the actor, to sexual contact by compulsion
3 or causes another person, not married to the actor, to
4 have sexual contact with the actor by compulsion;
- 5 (b) The person knowingly exposes the person's genitals to
6 another person under circumstances in which the
7 actor's conduct is likely to alarm the other person or
8 put the other person in fear of bodily injury; or
- 9 (c) The person knowingly trespasses on property for the
10 purpose of subjecting another person to surreptitious
11 surveillance for the sexual gratification of the
12 actor."

PART V

13
14 SECTION 35. The legislature finds that Act 49, Session
15 Laws of Hawaii 2004, established the offense of habitual
16 property crime, a class C felony, in section 708-803, Hawaii
17 Revised Statutes. The legislature found that, in 2002, Hawaii
18 ranked first in the nation for property crime rates and second
19 in larceny theft rates, and that a large portion of the crimes
20 are committed by habitual offenders. The legislature also found
21 that Act 49 would punish repeat property crime offenders by



1 making what would otherwise be a misdemeanor offense a class C
2 felony.

3 The legislature also finds that the Federal Bureau of
4 Investigation reported in 2012 that Hawaii ranked thirty-first
5 out of fifty-two jurisdictions regarding the rate of property
6 crimes per one hundred thousand inhabitants. Act 118, Session
7 Laws 2014, amended section 708-803(4), Hawaii Revised Statutes,
8 by clarifying that the sentence for a person convicted of
9 habitual property crime will be: (1) an indeterminate term of
10 imprisonment of five years, with a minimum term of one year; or
11 (2) for a first conviction only, a term of probation of five
12 years, with conditions to include but not be limited to one year
13 of imprisonment.

14 The legislature further finds that the dollar amount that
15 makes a theft offense a felony ranges among the states from \$200
16 in New Jersey and Virginia to \$2,500 in Wisconsin. The State's
17 felony theft threshold is the fifth lowest among fifty-one
18 jurisdictions, putting Hawaii in the bottom ten per cent.
19 Thirty-one of those jurisdictions have felony theft thresholds
20 of \$1,000 or more. Twenty-six states have increased the felony
21 theft threshold since 2005. Hawaii's threshold is \$300 and was



1 last raised in 1986, from \$200. The impetus to increase felony
2 theft thresholds often is the anticipated reductions to prison
3 populations and associated expenses.

4 The legislature further finds that the most frequently
5 cited rationale for the increase in the felony theft threshold
6 is inflation, as measured by the United States Department of
7 Labor's Consumer Price Index, and concerns about fundamental
8 fairness when dollar values have not been adjusted in years,
9 even decades, despite inflation. Other factors considered
10 include the felony theft thresholds of adjacent states and the
11 impact that increasing thresholds could have on frequent victims
12 of property crimes, including retail businesses.

13 The purpose of this part is to improve property crime
14 enforcement by making more repeat theft and forgery offenders
15 subject to punishment for a class C felony when they commit what
16 would otherwise be a misdemeanor offense. This Act also
17 balances the need to target professional theft and forgery
18 offenders with the need to update the State's felony theft
19 threshold. More specifically, this part amends chapter 708,
20 Hawaii Revised Statutes, regarding offenses against property
21 rights by:



- 1 (1) Focusing enforcement of "habitual property crime
2 perpetrator" laws on repeat theft and forgery
3 offenders, the offenders for whom enhanced punishment
4 is most appropriate;
- 5 (2) Including more repeat theft and forgery offenders
6 within the definition of "habitual property crime
7 perpetrator" and holding them accountable for more of
8 their prior convictions, by increasing the look-back
9 period for prior convictions from five years to ten
10 years and by eliminating the requirement that
11 convictions have occurred on separate dates;
- 12 (3) Declaring that the state of mind required to commit
13 the offense of habitual property crime does not apply
14 to the offender's status as a habitual property crime
15 perpetrator because the offender's culpability arises
16 from the offender's status, not from the offender's
17 state of mind with regard to that status;
- 18 (4) Increasing the dollar amount that makes an offense a
19 felony for the offenses of theft in the second degree,
20 theft in the third degree, shoplifting, and theft of
21 utility services, to partially reflect the effect of



1 inflation since the felony theft threshold was last
2 raised; and

3 (5) Repealing a provision that subjects a person to a
4 separate charge and enhanced penalty for using a
5 computer to commit an underlying theft crime because
6 it seems unduly harsh, given the prevalence of "smart
7 phones" and other computing devices.

8 SECTION 36. Section 708-803, Hawaii Revised Statutes, is
9 amended to read as follows:

10 "§708-803 Habitual property crime. (1) A person commits
11 the offense of habitual property crime if the person is a
12 habitual property crime perpetrator and commits a misdemeanor
13 ~~[offense within this chapter.]~~ property crime.

14 (2) For the purposes of this section, ~~[habitual]~~ "habitual
15 property crime perpetrator" means a person who, within ~~[five]~~
16 ten years of the instant offense, has convictions for~~[-~~

17 ~~(a) Three felonies within this chapter;~~

18 ~~(b) Three misdemeanors within this chapter; or~~

19 ~~(c) Any] any~~ any combination of ~~[three]~~ felonies and

20 misdemeanors ~~[within]~~ under part IV or VI of this

21 chapter[-], the total of which is not less than three



1 convictions. The convictions [~~must have occurred on~~
2 ~~separate dates and~~] shall be for separate incidents on
3 separate dates. The prosecution is not required to
4 prove any state of mind with respect to the person's
5 status as a habitual property crime perpetrator.
6 Proof that the person has the requisite minimum three
7 prior convictions shall be sufficient to establish
8 this element.

9 (3) A person commits a misdemeanor property crime if the
10 person engages in conduct that constitutes a misdemeanor offense
11 under parts IV or VI of this chapter. The prosecution
12 establishes that the person has committed a misdemeanor property
13 crime by proving that the person is guilty of committing any
14 misdemeanor offense under part IV or VI of this chapter.

15 [~~3~~] (4) Habitual property crime is a class C felony.

16 [~~4~~] (5) For a conviction under this section, the
17 sentence shall be either:

18 (a) An indeterminate term of imprisonment of five years;
19 provided that the minimum term of imprisonment shall
20 be not less than one year; or



1 (b) A term of probation of five years, with conditions to
2 include but not be limited to one year of
3 imprisonment; provided that probation shall only be
4 available for a first conviction under this section."

5 SECTION 37. Section 708-831, Hawaii Revised Statutes, is
6 amended by amending subsection (1) to read as follows:

7 "(1) A person commits the offense of theft in the second
8 degree if the person commits theft:

9 (a) Of property from the person of another;

10 (b) Of property or services the value of which exceeds
11 [~~\$300~~] \$750;

12 (c) Of an aquacultural product or part thereof from
13 premises that are fenced or enclosed in a manner
14 designed to exclude intruders or there is prominently
15 displayed on the premises a sign or signs sufficient
16 to give notice and reading as follows: "Private
17 Property", "No Trespassing", or a substantially
18 similar message;

19 (d) Of agricultural equipment, supplies, or products, or
20 part thereof, the value of which exceeds \$100 but does
21 not exceed \$20,000, or of agricultural products that



1 exceed twenty-five pounds, from premises that are
2 fenced, enclosed, or secured in a manner designed to
3 exclude intruders or there is prominently displayed on
4 the premises a sign or signs sufficient to give notice
5 and reading as follows: "Private Property", "No
6 Trespassing", or a substantially similar message; or
7 if at the point of entry of the premise, a crop is
8 visible. The sign or signs, containing letters not
9 less than two inches in height, shall be placed along
10 the boundary line of the land in a manner and in such
11 a position as to be clearly noticeable from outside
12 the boundary line. Possession of agricultural
13 products without ownership and movement certificates,
14 when a certificate is required pursuant to chapter
15 145, is prima facie evidence that the products are or
16 have been stolen; or
17 (e) Of agricultural commodities that are generally known
18 to be marketed for commercial purposes. Possession of
19 agricultural commodities without ownership and
20 movement certificates, when a certificate is required
21 pursuant to section 145-22, is prima facie evidence



1 that the products are or have been stolen; provided
2 that "agriculture commodities" has the same meaning as
3 in section 145-21."

4 SECTION 38. Section 708-832, Hawaii Revised Statutes, is
5 amended by amending subsection (1) to read as follows:

6 "(1) A person commits the offense of theft in the third
7 degree if the person commits theft:

8 (a) Of property or services the value of which exceeds
9 ~~[\$100-]~~ \$250; or

10 (b) Of gasoline, diesel fuel, or other related petroleum
11 products used as propellants of any value not
12 exceeding ~~[\$300-]~~ \$750."

13 SECTION 39. Section 708-833, Hawaii Revised Statutes, is
14 amended by amending subsection (1) to read as follows:

15 "(1) A person commits the offense of theft in the fourth
16 degree if the person commits theft of property or services of
17 any value not in excess of ~~[\$100-]~~ \$250."

18 SECTION 40. Section 708-833.5, Hawaii Revised Statutes, is
19 amended to read as follows:

20 "**§708-833.5 Shoplifting.** A person convicted of committing
21 ~~[the offense]~~ theft by means of shoplifting as defined in



1 section 708-830 shall be sentenced [~~as follows:~~] to the
2 following minimum fines:

3 (1) In cases involving [~~property the value or aggregate~~
4 ~~value of which exceeds \$300: as]~~ a class C felony,
5 [~~provided that~~] the minimum fine shall be four times
6 the value or aggregate value of the property involved;

7 (2) In cases involving [~~property the value or aggregate~~
8 ~~value of which exceeds \$100: as]~~ a misdemeanor,
9 [~~provided that~~] the minimum fine shall be three times
10 the value or aggregate value of the property involved;

11 (3) In cases involving [~~property the value or aggregate~~
12 ~~value of which is \$100 or less: as]~~ a petty
13 misdemeanor, [~~provided that~~] the minimum fine shall be
14 twice the value or aggregate value of the property
15 involved;

16 (4) If a person has previously been convicted of
17 committing [~~the offense~~] theft by means of shoplifting
18 as defined in section 708-830, the minimum fine shall
19 be doubled that specified in paragraphs (1), (2), and
20 (3), respectively, as set forth above; provided in the
21 event the convicted person defaults in payment of any



1 fine, and the default was not contumacious, the court
2 may sentence the person to community services as
3 authorized by section [†] 706-605(1)(d) [†]."

4 SECTION 41. Section 708-839.5, Hawaii Revised Statutes, is
5 amended by amending subsection (4) to read as follows:

6 "(4) A person commits the offense of theft of utility
7 services in the first degree in cases where the theft:

8 (a) Accrues to the benefit of any commercial trade or
9 business, including any commercial trade or business
10 operating in a residence, home, or dwelling;

11 (b) Is obtained through the services of a person hired to
12 commit the theft of utility services; in which event,
13 both the person hired and the person responsible for
14 the hiring shall be punished under this section as a
15 class C felony; or

16 (c) Accrues to the benefit of a residence, home, or
17 dwelling where the value of the theft of utility
18 services exceeds [~~\$300.~~] \$750.

19 Theft of utility services in the first degree is a class C
20 felony, and shall be sentenced in accordance with chapter 706,
21 except that for a first offense the court shall impose a minimum



1 sentence of a fine of at least \$1,000 or two times the value of
2 the theft, whichever is greater."

3 SECTION 42. Section 708-893, Hawaii Revised Statutes, is
4 amended by amending subsection (1) to read as follows:

5 "(1) A person commits the offense of use of a computer in
6 the commission of a separate crime if the person[+]

7 ~~(a) Intentionally uses a computer to obtain control over~~
8 ~~the property of the victim to commit theft in the~~
9 ~~first or second degree; or~~

10 ~~(b) Knowingly] knowingly uses a computer to identify,~~
11 ~~select, solicit, persuade, coerce, entice, induce,~~
12 ~~procure, pursue, surveil, contact, harass, annoy, or~~
13 ~~alarm the victim or intended victim of the following~~
14 ~~offenses:~~

15 ~~[(+)] (a) Section 707-726, relating to custodial~~
16 ~~interference in the first degree;~~

17 ~~[(+)] (b) Section 707-727, relating to custodial~~
18 ~~interference in the second degree;~~

19 ~~[(+)] (c) Section 707-731, relating to sexual assault in~~
20 ~~the second degree;~~



1 (2) Distinguish between perpetrators who are younger or
2 older than eighteen with regard to ordering a period
3 of separation following an apparent act of physical
4 abuse;

5 (3) Clarify that abuse in the presence of a household
6 member who is less than fourteen years of age applies
7 to abuse that occurs in the audio or visual presence
8 of that member for purposes of charging the abuser;
9 and

10 (4) Provide for moving the prohibition against furnishing
11 tobacco and electronic smoking devices to minors to
12 chapter 712, Hawaii Revised Statutes, regarding
13 offenses against public health and morals, where it
14 more logically would be found, by repealing the
15 prohibition from chapter 709, Hawaii Revised Statutes,
16 regarding offenses against family and against
17 incompetents.

18 SECTION 44. Section 709-906, Hawaii Revised Statutes, is
19 amended as follows:

20 1. By amending subsection (1) to read:



1 "(1) It shall be unlawful for any person, singly or in
2 concert, to physically abuse a family or household member or to
3 refuse compliance with the lawful order of a police officer
4 under subsection (4). The police, in investigating any
5 complaint of abuse of a family or household member, upon
6 request, may transport the abused person to a hospital or safe
7 shelter.

8 For the purposes of this section:

9 "Business day" means any calendar day, except Saturday,
10 Sunday, or any state holiday.

11 "Family or household member" [~~means~~]:

12 (a) Means spouses or reciprocal beneficiaries, former
13 spouses or reciprocal beneficiaries, persons in a
14 dating relationship as defined under section 586-1,
15 persons who have a child in common, parents, children,
16 persons related by consanguinity, and persons jointly
17 residing or formerly residing in the same dwelling
18 unit [-]; and

19 (b) Does not include those who are, or were, adult
20 roommates or cohabitants only by virtue of an economic
21 or contractual affiliation."



1 2. By amending subsection (4) to read:

2 "(4) Any police officer, with or without a warrant, shall
3 take the following course of action, regardless of whether the
4 physical abuse or harm occurred in the officer's presence:

5 (a) The police officer shall make reasonable inquiry of
6 the family or household member upon whom the officer
7 believes physical abuse or harm has been inflicted and
8 other witnesses as there may be;

9 (b) ~~[The police officer lawfully shall order the person]~~
10 If the person who the police officer reasonably
11 believes to have inflicted the abuse is eighteen years
12 of age or older, the police officer lawfully shall
13 order the person to leave the premises for a period of
14 separation, during which time the person shall not
15 initiate any contact, either by telephone or in
16 person, with the family or household member; provided
17 that the person is allowed to enter the premises with
18 police escort to collect any necessary personal
19 effects. The period of separation shall commence when
20 the order is issued and shall expire at 6:00 p.m. on
21 the second business day following the day the order



1 was issued; provided that the day the order is issued
2 shall not be included in the computation of the two
3 business days;

4 (c) If the person who the police officer reasonably
5 believes to have inflicted the abuse is under the age
6 of eighteen, the police officer may order the person
7 to leave the premises for a period of separation,
8 during which time the person shall not initiate any
9 contact with the family or household member by
10 telephone or in person; provided that the person is
11 allowed to enter the premises with police escort to
12 collect any necessary personal effects. The period of
13 separation shall commence when the order is issued and
14 shall expire at 6:00 p.m. on the second business day
15 following the day the order was issued; provided that
16 the day the order is issued shall not be included in
17 the computation of the two business days. The order
18 of separation may be amended at any time by a judge of
19 the family court. In determining whether to order a
20 person under the age of eighteen to leave the



1 premises, the police officer may consider the
2 following factors:

3 (i) Age of the person;

4 (ii) Relationship between the person and the family or
5 household member upon whom the police officer
6 reasonably believes the abuse has been inflicted;
7 and

8 (iii) Ability and willingness of the parent, guardian,
9 or other authorized adult to maintain custody and
10 control over the person;

11 [~~e~~] (d) All persons who are ordered to leave as stated
12 above shall be given a written warning citation
13 stating the date, time, and location of the warning
14 and stating the penalties for violating the warning.
15 A copy of the warning citation shall be retained by
16 the police officer and attached to a written report
17 which shall be submitted in all cases. A third copy
18 of the warning citation shall be given to the abused
19 person;

20 [~~d~~] (e) If the person so ordered refuses to comply with
21 the order to leave the premises or returns to the



1 premises before the expiration of the period of
 2 separation, or if the person so ordered initiates any
 3 contact with the abused person, the person shall be
 4 placed under arrest for the purpose of preventing
 5 further physical abuse or harm to the family or
 6 household member; and

7 ~~[-(e)]~~ (f) The police officer shall seize all firearms and
 8 ammunition that the police officer has reasonable
 9 grounds to believe were used or threatened to be used
 10 in the commission of an offense under this section."

11 3. By amending subsection (9) to read:

12 "(9) Where physical abuse occurs in the audio or visual
 13 presence of any family or household member who is less than
 14 fourteen years of age, abuse of a family or household member is
 15 a class C felony."

16 SECTION 45. Section 709-908, Hawaii Revised Statutes, is
 17 repealed.

18 ~~["§709-908 Tobacco products and electronic smoking~~
 19 ~~devices; persons under twenty-one years of age. (1) Effective~~
 20 ~~January 1, 2016, it shall be unlawful to sell or furnish a~~



1 ~~tobacco product in any shape or form or an electronic smoking~~
2 ~~device to a person under twenty one years of age.~~

3 ~~(2) Effective January 1, 2016, signs using the statement,~~
4 ~~"The sale of tobacco products or electronic smoking devices to~~
5 ~~persons under twenty one is prohibited", shall be posted on or~~
6 ~~near any vending machine in letters at least one half inch high~~
7 ~~and at or near the point of sale of any other location where~~
8 ~~tobacco products or electronic smoking devices are sold in~~
9 ~~letters at least one half inch high.~~

10 ~~(3) It shall be unlawful for a person under twenty one~~
11 ~~years of age to purchase any tobacco product or electronic~~
12 ~~smoking device, as those terms are defined in subsection (5).~~
13 ~~This provision does not apply if a person under the age of~~
14 ~~twenty one, with parental authorization, is participating in a~~
15 ~~controlled purchase as part of a law enforcement activity or a~~
16 ~~study authorized by the department of health under the~~
17 ~~supervision of law enforcement to determine the level of~~
18 ~~incidence of tobacco or electronic smoking devices sales to~~
19 ~~persons under twenty one years of age.~~

20 ~~(4) Any person who violates subsection (1) or (2), or~~
21 ~~both, shall be fined \$500 for the first offense. Any subsequent~~



1 ~~offenses shall subject the person to a fine not less than \$500~~
2 ~~nor more than \$2,000. Any person under twenty one years of age~~
3 ~~who violates subsection (3) shall be fined \$10 for the first~~
4 ~~offense. Any subsequent offense shall subject the violator to a~~
5 ~~fine of \$50, no part of which shall be suspended, or the person~~
6 ~~shall be required to perform not less than forty eight hours nor~~
7 ~~more than seventy two hours of community service during hours~~
8 ~~when the person is not employed and is not attending school.~~

9 ~~(5) For the purposes of this section:~~

10 ~~"Electronic smoking device" means any electronic product~~
11 ~~that can be used to aerosolize and deliver nicotine or other~~
12 ~~substances to the person inhaling from the device, including but~~
13 ~~not limited to an electronic cigarette, electronic cigar,~~
14 ~~electronic cigarillo, or electronic pipe, and any cartridge or~~
15 ~~other component of the device or related product.~~

16 ~~"Tobacco product" means any product made or derived from~~
17 ~~tobacco that contains nicotine or other substances and is~~
18 ~~intended for human consumption or is likely to be consumed,~~
19 ~~whether smoked, heated, chewed, absorbed, dissolved, inhaled, or~~
20 ~~ingested by other means. "Tobacco product" includes but is not~~
21 ~~limited to a cigarette, cigar, pipe tobacco, chewing tobacco,~~



1 ~~snuff, snus, or an electronic smoking device. "Tobacco product"~~
2 ~~does not include drugs, devices, or combination products~~
3 ~~approved for sale by the United States Food and Drug~~
4 ~~Administration, as those terms are defined in the Federal Food,~~
5 ~~Drug, and Cosmetic Act."]~~

6 PART VII

7 SECTION 46. The purpose of this part is to amend chapter
8 710, Hawaii Revised Statutes, regarding offenses against public
9 administration, to:

- 10 (1) Establish the felony offense of resisting an order to
11 stop a motor vehicle in the first degree, applicable
12 when a person both flees from a police officer and
13 does so by driving recklessly or at high speed; and
14 (2) Make the existing misdemeanor offense of resisting an
15 order to stop a motor vehicle a second degree offense
16 involving flight from a police officer without
17 reckless or high speed driving.

18 SECTION 47. Chapter 710, Hawaii Revised Statutes, is
19 amended by adding a new section to be appropriately designated
20 and to read as follows:



1 "§710- Resisting an order to stop a motor vehicle in
2 the first degree. (1) A person commits the offense of
3 resisting an order to stop a motor vehicle in the first degree
4 if the person:

5 (a) Intentionally fails to obey a direction of a law
6 enforcement officer, acting under color of the law
7 enforcement officer's official authority, to stop the
8 person's motor vehicle; and

9 (b) While intentionally fleeing from or attempting to
10 elude a law enforcement officer:

11 (i) Operates the person's motor vehicle in reckless
12 disregard of the safety of other persons; or

13 (ii) Operates the person's motor vehicle in reckless
14 disregard of the risk that the speed of the
15 person's vehicle exceeds:

16 (A) The applicable state or county speed limit
17 by thirty miles per hour or more; or

18 (B) Eighty miles per hour or more, irrespective
19 of the applicable state or county speed
20 limit.



1 For purposes of this section, "the applicable state or county
2 speed limit" shall have the same meaning as in section 291C-105.

3 (2) Resisting an order to stop a motor vehicle in the
4 first degree in a class C felony."

5 SECTION 48. Section 710-1027, Hawaii Revised Statutes, is
6 amended to read as follows:

7 "§710-1027 Resisting an order to stop a motor vehicle [-]
8 in the second degree. (1) A person commits the offense of
9 resisting an order to stop a motor vehicle in the second degree
10 if the person intentionally fails to obey a direction of a law
11 enforcement officer, acting under color of the law enforcement
12 officer's official authority, to stop the person's vehicle.

13 (2) Resisting an order to stop a motor vehicle in the
14 second degree is a misdemeanor."

15 PART VIII

16 SECTION 49. The purpose of this part is to amend chapter
17 712, Hawaii Revised Statutes, regarding offenses against public
18 health and morals, to:

19 (1) Move to this chapter the prohibition against
20 furnishing tobacco and electronic smoking devices to
21 minors that currently is found in chapter 709, Hawaii



1 Revised Statutes, because the offense is more akin to
2 offenses against public health and morals in this
3 chapter than those against the family and against
4 incompetents in chapter 709, Hawaii Revised Statutes;

5 (2) Clarify that a person commits the offense of
6 prostitution under section 712-1200(1)(a), Hawaii
7 Revised Statutes, when the person engages in, or
8 agrees or offers to engage in, sexual conduct "in
9 return" for a fee, distinguishing the offense from the
10 offense under section 712-1200(1)(b), Hawaii Revised
11 Statutes, in which the other person pays the fee; and

12 (3) Limit the offense of methamphetamine trafficking to
13 instances of manufacturing the drug or distributing it
14 to minors, which merit mandatory prison terms, so that
15 common methamphetamine offenses involving distribution
16 or possession of small amounts may be prosecuted as
17 promotion of dangerous drugs, which gives the
18 sentencing court the discretion to impose probation
19 and drug treatment when appropriate to manage these
20 offenders.



1 SECTION 50. Chapter 712, Hawaii Revised Statutes, is
2 amended by adding a new section to be appropriately designated
3 and to read as follows:

4 "§712- Tobacco products and electronic smoking devices;
5 persons under twenty-one years of age. (1) It shall be
6 unlawful to sell or furnish a tobacco product in any shape or
7 form or an electronic smoking device to a person under twenty-
8 one years of age.

9 (2) Signs using the statement, "The sale of tobacco
10 products or electronic smoking devices to persons under twenty-
11 one is prohibited", shall be posted on or near any vending
12 machine in letters at least one-half inch high and at or near
13 the point of sale of any other location where tobacco products
14 or electronic smoking devices are sold in letters at least one-
15 half inch high.

16 (3) It shall be unlawful for a person under twenty-one
17 years of age to purchase any tobacco product or electronic
18 smoking device, as those terms are defined in subsection (5).
19 This provision does not apply if a person under the age of
20 twenty-one, with parental authorization, is participating in a
21 controlled purchase as part of a law enforcement activity or a



1 study authorized by the department of health under the
2 supervision of law enforcement to determine the level of
3 incidence of tobacco or electronic smoking devices sales to
4 persons under twenty-one years of age.

5 (4) Any person who violates subsection (1) or (2), or
6 both, shall be fined \$500 for the first offense. Any subsequent
7 offenses shall subject the person to a fine not less than \$500
8 nor more than \$2,000. Any person under twenty-one years of age
9 who violates subsection (3) shall be fined \$10 for the first
10 offense. Any subsequent offense shall subject the violator to a
11 fine of \$50, no part of which shall be suspended, or the person
12 shall be required to perform not less than forty-eight hours nor
13 more than seventy-two hours of community service during hours
14 when the person is not employed and is not attending school.

15 (5) For the purposes of this section:

16 "Electronic smoking device" means any electronic product
17 that can be used to aerosolize and deliver nicotine or other
18 substances to the person inhaling from the device, including but
19 not limited to an electronic cigarette, electronic cigar,
20 electronic cigarillo, or electronic pipe, and any cartridge or
21 other component of the device or related product.



1 "Tobacco product" means any product made or derived from
2 tobacco that contains nicotine or other substances and is
3 intended for human consumption or is likely to be consumed,
4 whether smoked, heated, chewed, absorbed, dissolved, inhaled, or
5 ingested by other means. "Tobacco product" includes but is not
6 limited to a cigarette, cigar, pipe tobacco, chewing tobacco,
7 snuff, snus, or an electronic smoking device. "Tobacco product"
8 does not include drugs, devices, or combination products
9 approved for sale by the United States Food and Drug
10 Administration, as those terms are defined in the Federal Food,
11 Drug, and Cosmetic Act."

12 SECTION 51. Section 712-1200, Hawaii Revised Statutes, is
13 amended by amending subsection (1) to read as follows:

14 "(1) A person commits the offense of prostitution if the
15 person:

16 (a) Engages in, or agrees or offers to engage in, sexual
17 conduct with another person in return for a fee; or

18 (b) Pays, agrees to pay, or offers to pay a fee to another
19 to engage in sexual conduct."

20 SECTION 52. Section 712-1240.7, Hawaii Revised Statutes,
21 is amended to read as follows:



1 "~~[+]~~§712-1240.7~~[+]~~ Methamphetamine trafficking ~~[in the~~
2 ~~first degree]~~. (1) A person commits the offense of
3 methamphetamine trafficking ~~[in the first degree]~~ if the person
4 knowingly:

5 ~~[(a) Possesses one or more preparations, compounds,~~
6 ~~mixtures, or substances of an aggregate weight of one~~
7 ~~ounce or more containing methamphetamine or any of its~~
8 ~~salts, isomers, and salts of isomers,~~

9 ~~(b) Distributes one or more preparations, compounds,~~
10 ~~mixtures, or substances of an aggregate weight of~~
11 ~~one eighth ounce or more containing methamphetamine or~~
12 ~~any of its salts, isomers, and salts of isomers;~~

13 ~~(c)]~~ (a) Distributes methamphetamine in any amount to a
14 minor; or

15 ~~[(d)]~~ (b) Manufactures methamphetamine in any amount.

16 (2) Methamphetamine trafficking ~~[in the first degree]~~ is a
17 class A felony for which the defendant shall be sentenced as
18 provided in subsection (3).

19 (3) Notwithstanding sections 706-620(2), 706-640, 706-641,
20 706-659, 706-669, and any other law to the contrary, a person
21 convicted of methamphetamine trafficking ~~[in the first degree]~~



1 shall be sentenced to an indeterminate term of imprisonment of
2 twenty years with a mandatory minimum term of imprisonment of
3 not less than two years and not greater than eight years and a
4 fine not to exceed \$20,000,000; provided that:

5 (a) If the person has one prior conviction for
6 methamphetamine trafficking pursuant to this section,
7 promoting a dangerous drug in the first degree
8 pursuant to section 712-1241 and methamphetamine was
9 the drug upon which the conviction was predicated, or
10 section 712-1240.8 [7] as that section was in effect
11 prior to the effective date of this Act, the mandatory
12 minimum term of imprisonment shall be not less than
13 six years, eight months and not greater than thirteen
14 years, four months;

15 (b) If the person has two prior convictions for
16 methamphetamine trafficking pursuant to this section,
17 promoting a dangerous drug in the first degree
18 pursuant to section 712-1241 and methamphetamine was
19 the drug upon which the conviction was predicated, or
20 section 712-1240.8, as that section was in effect
21 prior to the effective date of this Act, the mandatory



1 minimum term of imprisonment shall be not less than
2 thirteen years, four months and not greater than
3 twenty years; or

4 (c) If the person has three or more prior convictions for
5 methamphetamine trafficking pursuant to this section,
6 promoting a dangerous drug in the first degree
7 pursuant to section 712-1241 and methamphetamine was
8 the drug upon which the conviction was predicated, or
9 section 712-1240.8 [7] as that section was in effect
10 prior to the effective date of this Act, the mandatory
11 minimum term of imprisonment shall be twenty years."

12 SECTION 53. Section 712-1240.9, Hawaii Revised Statutes,
13 is amended to read as follows:

14 "[+]§712-1240.9[+] Methamphetamine trafficking;
15 restitution and reimbursement. When sentencing a defendant
16 convicted of methamphetamine trafficking pursuant to section
17 712-1240.7 or 712-1240.8 [7] as that section was in effect prior
18 to the effective date of this Act, the court may order
19 restitution or reimbursement to the State or appropriate county
20 government for the cost incurred for any cleanup associated with
21 the manufacture or distribution of methamphetamine and to any



1 other person injured as a result of the manufacture or
2 distribution of methamphetamine."

3 SECTION 54. Section 712-1241, Hawaii Revised Statutes, is
4 amended by amending subsection (1) to read as follows:

5 "(1) A person commits the offense of promoting a dangerous
6 drug in the first degree if the person knowingly:

7 (a) Possesses one or more preparations, compounds,
8 mixtures, or substances of an aggregate weight of:

9 (i) One ounce or more, containing methamphetamine,
10 heroin, morphine, or cocaine or any of their
11 respective salts, isomers, and salts of isomers;
12 or

13 (ii) One and one-half ounce or more, containing one or
14 more of any of the other dangerous drugs [~~except~~
15 ~~methamphetamine~~];

16 (b) Distributes [~~except for methamphetamine~~]:

17 (i) Twenty-five or more capsules, tablets, ampules,
18 dosage units, or syrettes containing one or more
19 dangerous drugs; or

20 (ii) One or more preparations, compounds, mixtures, or
21 substances of an aggregate weight of:



1 (A) One-eighth ounce or more, containing
 2 methamphetamine, heroin, morphine, or
 3 cocaine or any of their respective salts,
 4 isomers, and salts of isomers; or

5 (B) Three-eighths ounce or more, containing any
 6 other dangerous drug;

7 (c) Distributes any dangerous drug in any amount to a
 8 minor except for methamphetamine; or

9 (d) Manufactures a dangerous drug in any amount, except
 10 for methamphetamine; provided that this subsection
 11 shall not apply to any person registered under section
 12 329-32."

13 SECTION 55. Section 712-1242, Hawaii Revised Statutes, is
 14 amended by amending subsection (1) to read as follows:

15 "(1) A person commits the offense of promoting a dangerous
 16 drug in the second degree if the person knowingly:

17 (a) Possesses twenty-five or more capsules, tablets,
 18 ampules, dosage units, or syrettes, containing one or
 19 more dangerous drugs;

20 (b) Possesses one or more preparations, compounds,
 21 mixtures, or substances of an aggregate weight of:



1 (i) One-eighth ounce or more, containing
2 methamphetamine, heroin, morphine, or cocaine or
3 any of their respective salts, isomers, and salts
4 of isomers; or

5 (ii) One-fourth ounce or more, containing any
6 dangerous drug; or

7 (c) Distributes any dangerous drug in any amount [~~—except~~
8 ~~for methamphetamine~~]."

9 SECTION 56. Section 712-1240.8, Hawaii Revised Statutes,
10 is repealed.

11 [~~"§712-1240.8—Methamphetamine trafficking in the second~~
12 ~~degree.—(1) A person commits the offense of methamphetamine~~
13 ~~trafficking in the second degree if the person knowingly~~
14 ~~distributes methamphetamine in any amount.~~

15 ~~(2) Methamphetamine trafficking in the second degree is a~~
16 ~~class B felony for which the defendant shall be sentenced as~~
17 ~~provided in subsection (3).~~

18 ~~(3) Notwithstanding sections 706-620, 706-640, 706-641,~~
19 ~~706-660, 706-669, and any other law to the contrary, a person~~
20 ~~convicted of methamphetamine trafficking in the second degree~~
21 ~~shall be sentenced to an indeterminate term of imprisonment of~~



- 1 (1) Clarify that the offense of inattention to driving
2 involves operating a motor vehicle negligently;
- 3 (2) Simplify the definition of "alcohol" as used in
4 chapter 291E, Hawaii Revised Statutes;
- 5 (3) Clarify that the amount deducted from an inmate's
6 individual account for victim restitution pursuant to
7 section 353-22.6, Hawaii Revised Statutes, shall be
8 deducted notwithstanding any contrary law;
- 9 (4) Amend the definition of "family or household member"
10 as used in chapter 586, Hawaii Revised Statutes, to be
11 consistent with the amendments made to section 709-
12 906, Hawaii Revised Statutes, by this Act;
- 13 (5) Authorize a pretrial officer of the department of
14 public safety's intake service center to invoke the
15 assistance of the court to secure a defendant's
16 appearance before the court when the defendant has
17 intentionally violated the conditions of bail,
18 recognizance, or supervised release;
- 19 (6) Clarify a provision authorizing a court to grant a
20 prosecutor and defense counsel access to records
21 obtained by the adult probation division for the



- 1 purpose of proceedings pursuant to chapter 704, Hawaii
2 Revised Statutes;
- 3 (7) Reformat for clarity and ease of use an enumerated
4 list of felonies for which criminal charges may be
5 instituted by written information;
- 6 (8) Authorize an offender to request the court to remove
7 from public access all judiciary files and other
8 information related to an expunged offense;
- 9 (10) Provide that chapter 853, Hawaii Revised Statutes,
10 does not apply to certain offenders who previously
11 have been granted a deferred acceptance of no contest
12 plea, to be consistent with treatment of offenders who
13 previously have been granted a deferred acceptance of
14 guilty plea; and
- 15 (11) Make conforming amendments to other statutes to
16 account for amendment or repeal of various statutes by
17 other parts of this Act.

18 SECTION 58. Section 291-12, Hawaii Revised Statutes, is
19 amended to read as follows:

20 "§291-12 Inattention to driving. Whoever operates any
21 vehicle [~~without due care or in a manner~~] negligently as to



1 cause a collision with, or injury or damage to, as the case may
2 be, any person, vehicle or other property shall be fined not
3 more than \$500 or imprisoned not more than thirty days, or both,
4 and may be subject to a surcharge of up to \$100, which shall be
5 deposited into the trauma system special fund."

6 SECTION 59. Section 291E-1, Hawaii Revised Statutes, is
7 amended by amending the definition of "alcohol" to read as
8 follows:

9 "Alcohol" means [~~the product of distillation of any~~
10 ~~fermented liquid, regardless of whether rectified, whatever may~~
11 ~~be the origin thereof, and includes ethyl alcohol, lower~~
12 ~~aliphatic alcohol, and phenol as well as synthetic ethyl~~
13 ~~alcohol, but not denatured or other alcohol that is considered~~
14 ~~not potable under the customs laws of the United States.]~~
15 ethanol or any substance containing ethanol."

16 SECTION 60. Section 353-10.5, Hawaii Revised Statutes, is
17 amended by amending subsection (d) to read as follows:

18 "(d) As used in this section, "alternative programs" mean
19 programs [~~which, from time to time,]~~ that are created and funded
20 by legislative appropriation or federal grant naming the
21 department of public safety or one of its operating agencies as



1 the expending agency and [~~which~~] that are intended to provide an
2 alternative to incarceration. Alternative programs may include:

3 (1) Home detention, curfew using electronic monitoring and
4 surveillance; or both;

5 (2) Supervised release, graduated release, furlough, and
6 structured educational or vocational programs;

7 [~~(3) A program of regimental discipline pursuant to section~~
8 ~~706-605.5,~~] and

9 [~~(4)~~] (3) Similar programs created and designated as
10 alternative programs by the legislature or the
11 director of public safety for inmates who do not pose
12 significant risks to the community."

13 SECTION 61. Section 353-22.6, Hawaii Revised Statutes, is
14 amended to read as follows:

15 "§353-22.6 Victim restitution. The director of public
16 safety shall enforce victim restitution orders against all
17 moneys earned by the inmate or deposited or credited to the
18 inmate's individual account while incarcerated. [~~The~~]
19 Notwithstanding any law to the contrary, the amount deducted
20 shall be twenty-five per cent of the total of all moneys earned,
21 new deposits, and credits to the inmate's individual account.



1 The moneys intended for victim restitution shall be deducted
2 monthly and paid to the victim once the amount reaches \$25, or
3 annually, whichever is sooner. This section shall not apply to
4 moneys earned on work furlough pursuant to section 353-17."

5 SECTION 62. Section 586-1, Hawaii Revised Statutes, is
6 amended by amending the definition of "family or household
7 member" to read as follows:

8 "Family or household member" [means]:

9 (1) Means spouses or reciprocal beneficiaries, former
10 spouses or former reciprocal beneficiaries, persons
11 who have a child in common, parents, children, persons
12 related by consanguinity, persons jointly residing or
13 formerly residing in the same dwelling unit, and
14 persons who have or have had a dating relationship[-];
15 and

16 (2) Does not include those who are, or were, adult
17 roommates or cohabitants only by virtue of an economic
18 or contractual affiliation."

19 SECTION 63. Section 804-7.2, Hawaii Revised Statutes, is
20 amended to read as follows:



1 "§804-7.2 Violations of conditions of release on bail,
2 recognizance, or supervised release. (a) Upon verified
3 application by the prosecuting attorney alleging that a
4 defendant has intentionally violated the conditions of release
5 on bail, recognizance, or supervised release, the judicial
6 officer named in section 804-5 shall issue a warrant directing
7 the defendant be arrested and taken forthwith before the court
8 [+]of[+] record for hearing.

9 (b) Upon verified application by a pretrial officer of the
10 intake service center that a defendant has intentionally
11 violated the conditions of release on bail, recognizance, or
12 supervised release, the court may issue an order pertaining to
13 bail to secure the defendant's appearance before the court or a
14 warrant directing that the defendant be arrested and taken
15 forthwith before the court of record for hearing.

16 (c) A law enforcement officer having reasonable grounds to
17 believe that a released felony defendant has violated the
18 conditions of release on bail, recognizance, or supervised
19 release, may, where it would be impracticable to secure a
20 warrant, arrest the defendant and take the defendant forthwith
21 before the court of record."



1 SECTION 64. Section 806-73, Hawaii Revised Statutes, is
2 amended by amending subsection (b) to read as follows:

3 "(b) All adult probation records shall be confidential and
4 shall not be deemed to be public records. As used in this
5 section, the term "records" includes but is not limited to all
6 records made by any adult probation officer in the course of
7 performing the probation officer's official duties. The
8 records, or the content of the records, shall be divulged only
9 as follows:

10 (1) A copy of any adult probation case record or of a
11 portion of it, or the case record itself, upon
12 request, may be provided to:

13 (A) An adult probation officer, court officer, social
14 worker of a Hawaii state adult probation unit, or
15 a family court officer who is preparing a report
16 for the courts; or

17 (B) A state or federal criminal justice agency, or
18 state or federal court program that:

19 (i) Is providing supervision of a defendant or
20 offender convicted and sentenced by the
21 courts of Hawaii; or



- 1 (ii) Is responsible for the preparation of a
- 2 report for a court;
- 3 (2) The residence address, work address, home telephone
- 4 number, or work telephone number of a current or
- 5 former defendant shall be provided only to:
- 6 (A) A law enforcement officer as defined in section
- 7 [+]710-1000[+] to locate the probationer for the
- 8 purpose of serving a summons or bench warrant in
- 9 a civil, criminal, or deportation hearing, or for
- 10 the purpose of a criminal investigation; or
- 11 (B) A collection agency or licensed attorney
- 12 contracted by the judiciary to collect any
- 13 delinquent court-ordered penalties, fines,
- 14 restitution, sanctions, and court costs pursuant
- 15 to section 601-17.5;
- 16 (3) A copy of a presentence report or investigative report
- 17 shall be provided only to:
- 18 (A) The persons or entities named in section 706-604;
- 19 (B) The Hawaii paroling authority;
- 20 (C) Any psychiatrist, psychologist, or other
- 21 treatment practitioner who is treating the



- 1 defendant pursuant to a court order or parole
- 2 order for that treatment;
- 3 (D) The intake service centers;
- 4 (E) In accordance with applicable law, persons or
- 5 entities doing research; and
- 6 (F) Any Hawaii state adult probation officer or adult
- 7 probation officer of another state or federal
- 8 jurisdiction who:
- 9 (i) Is engaged in the supervision of a defendant
- 10 or offender convicted and sentenced in the
- 11 courts of Hawaii; or
- 12 (ii) Is engaged in the preparation of a report
- 13 for a court regarding a defendant or
- 14 offender convicted and sentenced in the
- 15 courts of Hawaii;
- 16 (4) Access to adult probation records by a victim, as
- 17 defined in section 706-646 to enforce an order filed
- 18 pursuant to section 706-647, shall be limited to the
- 19 name and contact information of the defendant's adult
- 20 probation officer;



- 1 (5) Upon written request, the victim, or the parent or
2 guardian of a minor victim or incapacitated victim, of
3 a defendant who has been placed on probation for an
4 offense under section 580-10(d)(1), 586-4(e), 586-
5 11(a), or 709-906 may be notified by the defendant's
6 probation officer when the probation officer has any
7 information relating to the safety and welfare of the
8 victim;
- 9 (6) Notwithstanding paragraph (3) and upon notice to the
10 defendant, records and information relating to the
11 defendant's risk assessment and need for treatment
12 services; information related to the defendant's past
13 treatment and assessments, with the prior written
14 consent of the defendant for information from a
15 treatment service provider; provided that for any
16 substance abuse records such release shall be subject
17 to title 42 Code of Federal Regulations part 2,
18 relating to the confidentiality of alcohol and drug
19 abuse patient records; and information that has
20 therapeutic or rehabilitative benefit, may be provided
21 to:



- 1 (A) A case management, assessment, or treatment
2 service provider assigned by adult probation to
3 service the defendant; provided that the
4 information shall be given only upon the
5 screening for admission, acceptance, or
6 admittance of the defendant into a program;
- 7 (B) Correctional case manager, correctional unit
8 manager, and parole officers involved with the
9 defendant's treatment or supervision; and
- 10 (C) In accordance with applicable law, persons or
11 entities doing research;
- 12 (7) Probation drug test results may be released with prior
13 written consent of a defendant to the defendant's
14 treating physician when test results indicate
15 substance use which may be compromising the
16 defendant's medical care or treatment;
- 17 (8) Records obtained pursuant to section 704-404(8) may be
18 made available as provided in that section;
- 19 [+8+] (9) Any person, agency, or entity receiving records,
20 or contents of records, pursuant to this subsection
21 shall be subject to the same restrictions on



1 disclosure of the records as Hawaii state adult
2 probation offices; and
3 ~~[(9)]~~ (10) Any person who uses the information covered by
4 this subsection for purposes inconsistent with the
5 intent of this subsection or outside of the scope of
6 the person's official duties shall be fined no more
7 than \$500."

8 SECTION 65. Section 806-83, Hawaii Revised Statutes, is
9 amended by amending subsections (a) to (c) to read as follows:

10 "(a) Criminal charges may be instituted by written
11 information for a felony when the charge is a class C felony
12 under ~~[section]~~ :

- 13 (1) Section 19-3.5 (voter fraud); ~~[section]~~
14 (2) Section 128D-10 (knowing releases); ~~[section]~~
15 (3) Section 132D-14(a)(1), (2)(A), and (3) (relating to
16 penalties for failure to comply with requirements of
17 sections 132D-7, 132D-10, and 132D-16); ~~[section]~~
18 (4) Section 134-7(a) and (b) (ownership or possession
19 prohibited); ~~[section]~~
20 (5) Section 134-8 (ownership, etc., of automatic firearms,
21 silencers, etc., prohibited; penalties); ~~[section]~~



- 1 (6) Section 134-9 (licenses to carry); [~~section~~]
- 2 (7) Section 134-17(a) (relating to false information or
3 evidence concerning psychiatric or criminal history);
4 [~~section~~]
- 5 (8) Section 134-24 (place to keep unloaded firearms other
6 than pistols and revolvers); [~~section~~]
- 7 (9) Section 134-51 (deadly weapons); [~~section~~]
- 8 (10) Section 134-52 (switchblade knives); [~~section~~]
- 9 (11) Section 134-53 (butterfly knives); [~~section~~]
- 10 (12) Section 188-23 (possession or use of explosives,
11 electrofishing devices, and poisonous substances in
12 state waters prohibited); [~~section~~]
- 13 (13) Section 231-34 (attempt to evade or defeat tax);
14 [~~section~~]
- 15 (14) Section 231-36 (false and fraudulent statements);
16 [~~section~~]
- 17 (15) Section 245-37 (sale or purchase of packages of
18 cigarettes without stamps); [~~section~~]
- 19 (16) Section 245-38 (vending unstamped cigarettes);
20 [~~section~~]



- 1 (17) Section 245-51 (export and foreign cigarettes
2 prohibited); [~~section~~]
- 3 (18) Section 245-52 (alteration of packaging prohibited);
4 [~~section~~]
- 5 (19) Section 291C-12.5 (accidents involving substantial
6 bodily injury); [~~section~~]
- 7 (20) Section 291E-61.5 (habitually operating a vehicle
8 under the influence of an intoxicant); [~~section~~]
- 9 (21) Section 329-41 (prohibited acts B--penalties);
10 [~~section~~]
- 11 (22) Section 329-42 (prohibited acts C--penalties);
12 [~~section~~]
- 13 (23) Section 329-43.5 (prohibited acts related to drug
14 paraphernalia); [~~section~~]
- 15 (24) Section 329C-2 (manufacture, distribution, or
16 possession with intent to distribute an imitation
17 controlled substance to a person under eighteen years
18 of age); [~~section~~]
- 19 (25) Section 346-34(d)(2) and (e) (relating to fraud
20 involving food stamps or coupons); [~~section~~]



- 1 (26) Section 346-43.5 (medical assistance frauds;
- 2 penalties); [~~section~~]
- 3 (27) Section 383-141 (falsely obtaining benefits, etc.);
- 4 [~~section~~]
- 5 (28) Section 431:2-403(b)(2) (insurance fraud); [~~section~~]
- 6 (29) Section 482D-7 (violation of fineness standards and
- 7 stamping requirements); [~~section~~]
- 8 (30) Section 485A-301 (securities registration
- 9 requirement); [~~section~~]
- 10 (31) Section 485A-401 (broker-dealer registration
- 11 requirement and exemptions); [~~section~~]
- 12 (32) Section 485A-402 (agent registration requirement and
- 13 exemptions); [~~section~~]
- 14 (33) Section 485A-403 (investment adviser registration
- 15 requirement and exemptions); [~~section~~]
- 16 (34) Section 485A-404 (investment adviser representative
- 17 registration requirement and exemptions); [~~section~~]
- 18 (35) Section 485A-405 (federal covered investment adviser
- 19 notice filing requirement); [~~section~~]
- 20 (36) Section 485A-501 (general fraud); [~~section~~]



- 1 (37) Section 485A-502 (prohibited conduct in providing
2 investment advice); [~~section~~]
- 3 (38) Section 707-703 (negligent homicide in the second
4 degree); [~~section~~]
- 5 (39) Section 707-705 (negligent injury in the first
6 degree); [~~section~~]
- 7 (40) Section 707-711 (assault in the second degree);
8 [~~section~~]
- 9 (41) Section 707-713 (reckless endangering in the first
10 degree); [~~section~~]
- 11 (42) Section 707-721 (unlawful imprisonment in the first
12 degree); [~~section~~]
- 13 (43) Section 707-726 (custodial interference in the first
14 degree); [~~section~~]
- 15 (44) Section 707-757 (electronic enticement of a child in
16 the second degree); [~~section~~]
- 17 (45) Section 707-766 (extortion in the second degree);
18 [~~section~~]
- 19 (46) Section 708-811 (burglary in the second degree);
20 [~~section~~]



- 1 (47) Section 708-812.6 (unauthorized entry in a dwelling in
2 the second degree); [~~section~~]
- 3 (48) Section 708-821 (criminal property damage in the
4 second degree); [~~section~~]
- 5 (49) Section 708-831 (theft in the second degree);
6 [~~section~~]
- 7 (50) Section 708-833.5 (shoplifting); [~~section~~]
- 8 (51) Section 708-835.5 (theft of livestock); [~~section~~]
- 9 (52) Section 708-836 (unauthorized control of propelled
10 vehicle); [~~section~~]
- 11 (53) Section 708-836.5 (unauthorized entry into motor
12 vehicle in the first degree); [~~section~~]
- 13 (54) Section 708-839.5 (theft of utility services);
14 [~~section~~]
- 15 (55) Section 708-839.55 (unauthorized possession of
16 confidential personal information); [~~section~~]
- 17 (56) Section 708-839.8 (identity theft in the third
18 degree); [~~section~~]
- 19 (57) Section 708-852 (forgery in the second degree);
20 [~~section~~]



- 1 (58) Section 708-854 (criminal possession of a forgery
- 2 device); [~~section~~]
- 3 (59) Section 708-858 (suppressing a testamentary or
- 4 recordable instrument); [~~section~~]
- 5 (60) Section 708-875 (trademark counterfeiting); [~~section~~]
- 6 (61) Section 708-891.6 (computer fraud in the third
- 7 degree); [~~section~~]
- 8 (62) Section 708-892.6 (computer damage in the third
- 9 degree); [~~section~~]
- 10 (63) Section 708-895.7 (unauthorized computer access in the
- 11 third degree); [~~section~~]
- 12 (64) Section 708-8100 (fraudulent use of a credit card);
- 13 [~~section~~]
- 14 (65) Section 708-8102 (theft, forgery, etc., of credit
- 15 cards); [~~section~~]
- 16 (66) Section 708-8103 (credit card fraud by a provider of
- 17 goods or services); [~~section~~]
- 18 (67) Section 708-8104 (possession of unauthorized credit
- 19 card machinery or incomplete cards); [~~section~~]
- 20 (68) Section 708-8200 (cable television service fraud in
- 21 the first degree); [~~section~~]



- 1 (69) Section 708-8202 (telecommunication service fraud in
2 the first degree); [~~section~~]
- 3 (70) Section 709-903.5 (endangering the welfare of a minor
4 in the first degree); [~~section~~]
- 5 (71) Section 709-906 (abuse of family or household
6 members); [~~section~~]
- 7 (72) Section 710-1016.3 (obtaining a government-issued
8 identification document under false pretenses in the
9 first degree); [~~section~~]
- 10 (73) Section 710-1016.6 (impersonating a law enforcement
11 officer in the first degree); [~~section~~]
- 12 (74) Section 710-1017.5 (sale or manufacture of deceptive
13 identification document); [~~section~~]
- 14 (75) Section 710-1018 (securing the proceeds of an
15 offense); [~~section~~]
- 16 (76) Section 710-1021 (escape in the second degree);
17 [~~section~~]
- 18 (77) Section 710-1023 (promoting prison contraband in the
19 second degree); [~~section~~]
- 20 (78) Section 710-1024 (bail jumping in the first degree);
21 [~~section~~]



1 (91) Section 712-1247 (promoting a detrimental drug in the
2 first degree); [~~section~~]

3 (92) Section 712-1249.6(1)(a), (b), or (c) (promoting a
4 controlled substance in, on, or near schools, school
5 vehicles, public parks, or public housing projects or
6 complexes); [~~section~~]

7 (93) Section 803-42 (interception, access, and disclosure
8 of wire, oral, or electronic communications, use of
9 pen register, trap and trace device, and mobile
10 tracking device prohibited); or [~~section~~]

11 (94) Section 846E-9 (failure to comply with covered
12 offender registration requirements).

13 (b) Criminal charges may be instituted by written
14 information for a felony when the charge is a class B felony
15 under [~~section~~]:

16 (1) Section 134-7(b) (ownership or possession prohibited,
17 when; penalty); [~~section~~]

18 (2) Section 134-23 (place to keep loaded firearms other
19 than pistols and revolvers; penalties); [~~section~~]

20 (3) Section 134-25 (place to keep pistol or revolver;
21 penalty); [~~section~~]



- 1 (4) Section 134-26 (carrying or possessing a loaded
2 firearm on a public highway; penalty); [~~section~~]
- 3 (5) Section 329-43.5 (prohibited acts related to drug
4 paraphernalia); [~~section~~]
- 5 (6) Section 708-810 (burglary in the first degree);
6 [~~section~~]
- 7 (7) Section 708-830.5 (theft in the first degree);
8 [~~section~~]
- 9 (8) Section 708-839.7 (identity theft in the second
10 degree); [~~section~~]
- 11 (9) Section 708-851 (forgery in the first degree);
12 [~~section~~]
- 13 (10) Section 708-891.5 (computer fraud in the second
14 degree); [~~section~~]
- 15 (11) Section 708-892.5 (computer damage in the second
16 degree); [~~section 712-1240.8 (methamphetamine~~
17 ~~trafficking in the second degree); section~~]
- 18 (12) Section 712-1242 (promoting a dangerous drug in the
19 second degree); [~~section~~]
- 20 (13) Section 712-1245 (promoting a harmful drug in the
21 second degree); or [~~section~~]



- 1 (1) In the case of an arrest for a felony or misdemeanor
2 where conviction has not been obtained because of bail
3 forfeiture;
- 4 (2) For a period of five years after arrest or citation in
5 the case of a petty misdemeanor or violation where
6 conviction has not been obtained because of a bail
7 forfeiture;
- 8 (3) In the case of an arrest of any person for any offense
9 where conviction has not been obtained because the
10 person has rendered prosecution impossible by
11 absenting oneself from the jurisdiction;
- 12 (4) In the case of a person acquitted by reason of a
13 mental or physical defect under chapter 704; and
- 14 (5) For a period of one year upon discharge of the
15 defendant and dismissal of the charge against the
16 defendant in the case of a deferred acceptance of
17 guilty plea or nolo contendere plea, in accordance
18 with chapter 853.

19 Any person entitled to an expungement order hereunder may
20 by written application also request return of all fingerprints
21 or photographs taken in connection with the person's arrest.



1 The attorney general or the attorney general's duly authorized
2 representative within the department of the attorney general,
3 within 120 days after receipt of the written application, shall,
4 when so requested, deliver, or cause to be delivered, all
5 fingerprints or photographs of the person, unless the person has
6 a record of conviction or is a fugitive from justice, in which
7 case the photographs or fingerprints may be retained by the
8 agencies holding such records.

9 (b) Upon the issuance of the expungement certificate, the
10 person applying for the order shall be treated as not having
11 been arrested in all respects not otherwise provided for in this
12 section.

13 (c) Upon the issuance of the expungement order, all arrest
14 records pertaining to the arrest [~~which~~] that are in the custody
15 or control of any law enforcement agency of the state or any
16 county government, and [~~which~~] that are capable of being
17 forwarded to the attorney general without affecting other
18 records not pertaining to the arrest, shall be so forwarded for
19 placement of the arrest records in a confidential file.

20 (d) Records filed under subsection (c) shall not be
21 divulged except upon inquiry by:



- 1 (1) A court of law or an agency thereof which is preparing
2 a presentence investigation for the court;
- 3 (2) An agency of the federal or state government which is
4 considering the subject person for a position
5 immediately and directly affecting the national or
6 state security; or
- 7 (3) A law enforcement agency acting within the scope of
8 their duties.

9 Response to any other inquiry shall not be different from
10 responses made about persons who have no arrest records.

11 (e) The attorney general or the attorney general's duly
12 authorized representative within the department of the attorney
13 general shall issue to the person for whom an expungement order
14 has been entered, a certificate stating that the order has been
15 issued and that its effect is to annul the record of a specific
16 arrest. The certificate shall authorize the person to state, in
17 response to any question or inquiry, whether or not under oath,
18 that the person has no record regarding the specific arrest.
19 Such a statement shall not make the person subject to any action
20 for perjury, civil suit, discharge from employment, or any other
21 adverse action.



1 (f) Any person for whom an expungement order has been
 2 entered may request in writing that the court seal or otherwise
 3 remove all judiciary files and other information pertaining to
 4 the applicable arrest or case from the judiciary's publicly
 5 accessible electronic databases. The court shall make good
 6 faith diligent efforts to seal or otherwise remove the
 7 applicable files and information within a reasonable time.

8 [~~f~~] (g) The meaning of the following terms as used in
 9 this section shall be as indicated:

10 "Arrest record" means any existing photographic and
 11 fingerprint cards relating to the arrest.

12 "Conviction" means a final determination of guilt whether
 13 by plea of the accused in open court, by verdict of the jury or
 14 by decision of the court.

15 [~~g~~] (h) The attorney general shall adopt rules pursuant
 16 to chapter 91 necessary for the purpose of this section.

17 [~~h~~] (i) Nothing in this section shall affect the
 18 compilation of crime statistics or information stored or
 19 disseminated as provided in chapter 846."

20 SECTION 67. Section 846F-3, Hawaii Revised Statutes, is
 21 amended by amending subsection (b) to read as follows:



1 "(b) When a defendant is also ordered to pay a fine, make
 2 restitution, pay a crime victim compensation fee, or pay other
 3 fees in addition to the internet crimes against children fee,
 4 payments by the defendant shall be made in the order of priority
 5 established under section [~~706-648.~~] 706-_____."

6 SECTION 68. Section 853-4, Hawaii Revised Statutes, is
 7 amended by amending subsection (a) to read as follows:

8 "(a) This chapter shall not apply when:

9 (1) The offense charged involves the intentional, knowing,
 10 reckless, or negligent killing of another person;

11 (2) The offense charged is:

12 (A) A felony that involves the intentional, knowing,
 13 or reckless bodily injury, substantial bodily
 14 injury, or serious bodily injury of another
 15 person; or

16 (B) A misdemeanor or petty misdemeanor that carries a
 17 mandatory minimum sentence and that involves the
 18 intentional, knowing, or reckless bodily injury,
 19 substantial bodily injury, or serious bodily
 20 injury of another person;



- 1 (3) The offense charged involves a conspiracy or
2 solicitation to intentionally, knowingly, or
3 recklessly kill another person or to cause serious
4 bodily injury to another person;
- 5 (4) The offense charged is a class A felony;
- 6 (5) The offense charged is nonprobationable;
- 7 (6) The defendant has been convicted of any offense
8 defined as a felony by the Hawaii Penal Code or has
9 been convicted for any conduct that if perpetrated in
10 this State would be punishable as a felony;
- 11 (7) The defendant is found to be a law violator or
12 delinquent child for the commission of any offense
13 defined as a felony by the Hawaii Penal Code or for
14 any conduct that if perpetrated in this State would
15 constitute a felony;
- 16 (8) The defendant has a prior conviction for a felony
17 committed in any state, federal, or foreign
18 jurisdiction;
- 19 (9) A firearm was used in the commission of the offense
20 charged;



- 1 (10) The defendant is charged with the distribution of a
2 dangerous, harmful, or detrimental drug to a minor;
- 3 (11) The defendant has been charged with a felony offense
4 and has been previously granted deferred acceptance of
5 guilty plea [~~status~~] or no contest plea for a prior
6 offense, regardless of whether the period of deferral
7 has already expired;
- 8 (12) The defendant has been charged with a misdemeanor
9 offense and has been previously granted deferred
10 acceptance of guilty plea [~~status~~] or no contest plea
11 for a prior felony, misdemeanor, or petty misdemeanor
12 for which the period of deferral has not yet expired;
- 13 (13) The offense charged is:
- 14 (A) Escape in the first degree;
- 15 (B) Escape in the second degree;
- 16 (C) Promoting prison contraband in the first degree;
- 17 (D) Promoting prison contraband in the second degree;
- 18 (E) Bail jumping in the first degree;
- 19 (F) Bail jumping in the second degree;
- 20 (G) Bribery;
- 21 (H) Bribery of or by a witness;



- 1 (I) Intimidating a witness;
- 2 (J) Bribery of or by a juror;
- 3 (K) Intimidating a juror;
- 4 (L) Jury tampering;
- 5 (M) Promoting prostitution in the second degree;
- 6 (N) Abuse of family or household member;
- 7 (O) Sexual assault in the second degree;
- 8 (P) Sexual assault in the third degree;
- 9 (Q) A violation of an order issued pursuant to
- 10 chapter 586;
- 11 (R) Promoting child abuse in the second degree;
- 12 (S) Promoting child abuse in the third degree;
- 13 (T) Electronic enticement of a child in the first
- 14 degree;
- 15 (U) Electronic enticement of a child in the second
- 16 degree;
- 17 (V) Prostitution pursuant to section 712-1200(1)(b);
- 18 (W) Street solicitation of prostitution under section
- 19 712-1207(1)(b);
- 20 (X) Solicitation of prostitution near schools or
- 21 public parks under section 712-1209;



1 (Y) Habitual solicitation of prostitution under
2 section 712-1209.5; or

3 (Z) Solicitation of a minor for prostitution under
4 section 712-1209.1;

5 (14) The defendant has been charged with:

6 (A) Knowingly or intentionally falsifying any report
7 required under chapter 11, part XIII with the
8 intent to circumvent the law or deceive the
9 campaign spending commission; or

10 (B) Violating section 11-352 or 11-353; or

11 (15) The defendant holds a commercial driver's license and
12 has been charged with violating a traffic control law,
13 other than a parking law, in connection with the
14 operation of any type of motor vehicle."

15 PART X

16 SECTION 69. Act 139, Session Laws of Hawaii 2012, as
17 amended by section 2 of Act 67, Session Laws of Hawaii 2013, is
18 amended by amending section 14 to read as follows:

19 "SECTION 14. This Act shall take effect on July 1, 2012;
20 provided that:

21 (1) Section 3 shall take effect on January 1, 2013;



1 (2) Section 7 shall take effect on July 1, 2012, for any
2 individual on parole supervision on or after July 1,
3 2012;

4 (3) Section 8 shall take effect on July 1, 2012, and shall
5 be applicable to individuals committing an offense on
6 or after that date; and

7 (4) Sections 3, 7, 8, [~~10~~] and 11 shall be repealed on
8 July 1, 2018, and sections 353-10, 353-66, 706-670(1),
9 [~~353-22.67~~] and 353-69, Hawaii Revised Statutes, shall
10 be reenacted in the form [en] in which [~~it~~] they read
11 on June 30, 2012."

12 SECTION 70. This Act does not affect rights and duties
13 that matured, penalties that were incurred, and proceedings that
14 were begun before its effective date.

15 SECTION 71. Statutory material to be repealed is bracketed
16 and stricken. New statutory material is underscored.

17 SECTION 72. This Act shall take effect on March 15, 2038;
18 provided that:

19 (1) Sections 5, 9, and 12 shall take effect on July 1,
20 2018; and



1 (2) The amendments made to section 806-73(b), Hawaii
2 Revised Statutes, in section 64 of this Act shall not
3 be repealed when section 806-73(b), Hawaii Revised
4 Statutes, is repealed and reenacted on July 1, 2016,
5 pursuant to Act 119, Session Laws of Hawaii 2011.



Report Title:

Administration of Justice; Penal Code and Related Amendments

Description:

Enacts recommendations of the penal code review committee convened pursuant to HCR155, SD1 (2015). Effective 3/15/2038.
(HD1)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

